

# **General Purchase Terms and Conditions A.B.S. All Brake Systems B.V.**

of – 10 March 2023 --

*(filed with the Chamber of Commerce in Utrecht under number 30131523)*

## **1. General**

- 1.1 These terms and conditions are applicable to all orders placed with the Supplier by ABS and to all sale and purchase, delivery and any other agreements concluded or to be concluded by and between the Supplier and ABS, unless expressly stipulated otherwise in writing. 'ABS' is hereby defined as: A.B.S. All Brake Systems B.V. and its subsidiaries in and outside of the Netherlands (inter alia: A.B.S. Hungary Kft. en A.B.S. Poland SP. z o.o.).
- 1.2 Through acceptance of the orders of ABS the Supplier accepts these terms and conditions upon simultaneous exclusion of the applicability of other general terms and conditions, including possible general terms and conditions of the Supplier.
- 1.3 Deviations from and additions to existing agreements, assignments and orders shall only have binding effect on ABS if they have been confirmed by ABS in writing.
- 1.4 If an additional written agreement is concluded by and between ABS and the Supplier and the content of this agreement deviates from one or more provisions laid down in these terms and conditions, the provisions in the agreement shall prevail over these provisions.

## **2. Products and catalogues**

- 2.1 The Supplier shall at its own initiative and if so requested render the current catalogues, product specifications and pricelists of the Products available to ABS, in hard copy and where available also in digital form. The Supplier shall send ABS an overview of the total deliverable assortment at least each and every calendar quarter. This overview at least contains the following information:
  - technical product information;
  - price data;
  - logistic data.
- 2.2 The Supplier shall at its own initiative send ABS a country of origin statement per product line once a year.

## **3. Information exchange and progress**

- 3.1 The Supplier and ABS shall send each other a communication schedule that specifies for which subject matters and in what way the relevant departments and contact persons can be contacted. The parties keep each other informed of any changes.
- 3.2 ABS and the Supplier shall at least annually, or as often as indicated by ABS, hold progress meetings. During the course thereof the progress of the orders, products and product lines, prices, process improvements and the like are discussed.

#### **4. Orders and delivery times**

- 4.1 ABS shall place its orders and the Supplier shall process these orders in accordance with the order process of ABS as applicable at the time of the order. ABS is entitled to change the order process. A description of the order process is forwarded by ABS on demand.
- 4.2 The Supplier guarantees the delivery of the Products ordered by ABS within the delivery time as stipulated by and between the Parties. The Supplier shall confirm each and every order of ABS to ABS within three (3) working days after the relevant order has been placed at order line level or item level.
- 4.3 In the following instances ABS is entitled to cancel orders that have already been placed with the Supplier, either in full or in part, free of charge if:
- the Supplier does not deliver within the stipulated delivery time,
  - the order is not confirmed or untimely or incompletely; or
  - ABS has good reason to assume that the Supplier shall (possibly) not deliver or untimely or incompletely.
- If the Supplier does not deliver within the stipulated delivery time and ABS does not cancel the order then ABS is entitled to deduct a 5% discount from the payable amount of the invoice for the Products delivered in an untimely fashion.

#### **5. Transport and delivery**

- 5.1 The ICC Incoterms as applicable on the day of delivery are applicable to all deliveries by the Supplier. Unless expressly stipulated otherwise per order, the Products are delivered to ABS in IJsselsteijn, the Netherlands, delivery duty paid (DDP).
- 5.2 The risk of and the title to the Products transfer at the moment of the factual delivery to ABS or to the person or persons designated by ABS.
- 5.3 ABS is entitled to – contrary to the provisions set forth in article 5.1 – change the manner of transport and delivery, the time and the destination of an order. The Supplier shall – before ABS decides to proceed with a change – communicate the reasonable contract reductions or extras of those changes to ABS.
- 5.4 The Supplier delivers the Products to ABS unencumbered and free from rights of third parties, including but not limited to ownership rights and reservations, attachments, pledges or similar rights and security or user rights in any form whatsoever, and the Supplier guarantees that ABS acquires the full title to the Products.
- 5.5 The Supplier shall deliver the Products on Euro pallets of which the height shall not exceed one metre (including pallet). In case of a possible overstepping thereof and if it is, at the discretion of ABS, necessary to restack the Products then ABS shall be allowed to deduct a 2% discount from the invoice applicable to said shipment of the Supplier on account of processing costs.
- 5.6 The Supplier shall pack and label the Products in accordance with the specifications as stipulated by and between the Parties.

## **6. Prices and bonus**

- 6.1 The prices as communicated to ABS by the Supplier are applicable to the Products or, if additional arrangements have been stipulated by and between the Supplier and ABS in writing, the prices (including possible price deductions) as applicable upon the conclusion of said written arrangements.
- 6.2 ABS is entitled to the bonuses as stipulated with the Supplier and as from time to time again stipulated in writing by and between the Parties. To this end ABS and the Supplier shall annually consult with each other. If they do not agree on new or changed bonus arrangements then the bonus arrangements as applicable in the preceding period shall apply between the Parties.

## **7. Price changes**

- 7.1 The Supplier shall timely communicate possible price changes to ABS. Timely is understood as at least 90 calendar days before the relevant price change takes effect.
- 7.2 In case of a price increase of a product offered by the Supplier ABS is entitled to order the product against the existing price during the period intended in article 7.1, even if the factual delivery of the Products takes place after the expiry of that period. In case of a price reduction of a product offered by the Supplier ABS is entitled to order the product against the new, lower price during the period intended in article 7.1 if the delivery of the Products takes place after expiry of that period.

## **8. Invoicing and payment**

- 8.1 The Supplier shall invoice ABS on a monthly basis. The Supplier shall send a digital collection invoice for all delivered Products. Each and every invoice contains, at order line level, the ABS reference, purchase order number and product number. The possibly payable turnover tax shall be specified separately.
- 8.2 Unless stipulated otherwise per order the Supplier shall invoice ABS in EUR.
- 8.3 The payment term is 90 calendar days after receipt of the invoice by ABS and after complete implementation of the relevant order(s).
- 8.4 ABS is entitled to a payment discount of 4% of the value of the invoice excluding turnover tax if ABS pays the invoice within 10 calendar days after receipt of the invoice.
- 8.5 If the payment method or location specified by the Supplier implies additional costs on the part of ABS then ABS shall be entitled to set these costs off against the amounts payable by the same.
- 8.6 ABS is entitled to set off possible deficits, surpluses, return shipments, deposit goods and warranty claims against the invoices of the Supplier. The Supplier shall timely provide ABS with possible credit notes. If on balance ABS has a claim vis-à-vis the Supplier then the Supplier shall, at the discretion of ABS, transfer the credit amount to ABS within 90 days or set the same off against invoices for existing or future orders of ABS placed with the Supplier.

## **9. Deficits, surpluses, overstock and (deposit) return shipments**

- 9.1 In case of a deficit ABS receives less or no Products than specified on the packing slip of the relevant shipment. ABS can, at its sole discretion, request the Supplier to yet deliver or to send a credit note for the missing Products.
- 9.2 In case of a surplus ABS receives more Products than specified on the packing slip of the relevant shipment. ABS can, at its sole discretion, retain the surplus or return the same at the expense of the Supplier.
- 9.3 Overstock is the quantity that ABS keeps in stock in excess of its calculated minimum quantity. ABS is entitled to set off the overstock compensation stipulated with the Supplier against the invoices of the Supplier.
- 9.4 Return shipment of Deposit Products to the Supplier by ABS and the processing thereof shall be carried out in accordance with the deposit scheme of ABS as applicable at the moment the Products are returned. This is also applicable to Products that are taken back by the Supplier under the warranty within the meaning of article 10. A description of the deposit scheme is sent to the Supplier by ABS on demand. ABS is entitled to change the deposit scheme.

## **10. Warranty and product requirements**

- 10.1 The Supplier warrants the soundness of the Products delivered by the same. This warranty at least comprises that:
- (a) the Products are suitable for normal use in social and economic life;
  - (b) the Products are new, of good quality and free from mistakes in terms of design, processing, manufacture, construction and dimensions as well as free from defects in the used materials and offering the safety that can be expected of the same;
  - (c) the Products, if stipulated by and between ABS and the Supplier, comply with the stipulated product specifications and quality requirements;
  - (d) the Products are fully in accordance with the order of ABS in terms of quantity, description, quality and performance;
  - (e) all applicable national and international regulations, including regulations of the European Union, with regard to the Products and the packing are fully complied with;
  - (f) the Products otherwise comply with the requirements that can within reason be imposed on the same.
- 10.2 The Products received from the Supplier by ABS shall, in any case, be qualified as defective within the meaning of the previous paragraph of this article if defects occur within one year after the date of delivery by ABS to its buyer, unless this is the result of normal wear and tear or can be blamed on incorrect use or assembly by or on behalf of the buyer of ABS. The aforementioned warranty implies that the defects that occur within one year after delivery are on demand of ABS immediately and fully repaired by the Supplier free of charge, where necessary through replacement of the Products or components thereof. If this appears to be impossible or if this is preferred by ABS, the Supplier shall repay ABS the price paid by the same.

- 10.3 After the remedy of defects a new warranty period as described in this article takes off and the Supplier warrants with regard to the replaced or repaired Products the soundness as described in the first paragraph of this article.
- 10.4 The Supplier shall indemnify ABS against claims of third parties for damages to the Products delivered to ABS by the Supplier and for damages to other goods and persons that are connected with the Products delivered by the Supplier, to the extent that ABS is liable for these damages vis-à-vis said third parties.
- 10.5 The Supplier warrants that the sale and delivery of the Products by the Supplier to ABS and the further use, distribution, sale, assembly and the like thereof by ABS and its buyers does not, either directly or indirectly, infringe any intellectual, industrial or similar property rights of third parties, including but not limited to copyrights, model rights, patents and exclusive sales rights.
- 10.6 If ABS is addressed by third parties for damages that are connected with the Products within the meaning of articles 10.4 and 10.5 above then ABS shall forthwith inform the Supplier accordingly. The Supplier shall indemnify ABS against all damages that ABS incurs or threatens to incur in connection therewith, including legal expenses and a reasonable compensation for incurred hours and costs.

## **11. New products**

If the Supplier starts a serial production of new or existing Products at the request of ABS and exclusively for ABS then the Parties shall establish the specifications and other terms and conditions, to the extent that they deviate from the provisions set forth in this Agreement, in writing and in mutual consultation.

## **12. Confidentiality**

The Supplier and the employees, suppliers, manufacturers, transporters and other parties hired by the same are not allowed to disclose, either directly or indirectly, orally, in writing or otherwise the content of this Agreement or data or information that come to their knowledge within the framework of this Agreement to others, except in so far as a statutory obligation gives cause for this or if this is required in connection with the correct and timely implementation of the Agreement and the agreements and orders originating there from. In case of a breach of this provision the Supplier forfeits an immediately claimable penalty to ABS of EUR 25,000.00, without prejudice to the right of ABS to claim its actual damages from the Supplier and without prejudice to its other rights pursuant to these terms and conditions and other arrangements between the Parties.

## **13. Liability**

- 13.1 Barring intent or wilful recklessness of the senior management of ABS, ABS shall only be held to that which has expressly been stipulated in this Agreement and further liability for direct, indirect damages and consequential damages is excluded. In all instances the liability of ABS shall be limited to the value of the invoice of the delivery of Products to which the possible damages are directly related.

13.2 The Supplier is without limitation liable for property damage or personal injury of any nature whatsoever that is the result of an act in breach of its contractual obligations and for damages that are caused by acts or omissions of the Supplier or for which the Supplier is responsible. The liability also applies to damages as a result of an overstepping of the delivery time, damages to goods, trading losses and other indirect damages.

#### **14. Term and termination**

14.1 The term of the agreement is established by ABS and the Supplier in writing. If ABS and the Supplier have not stipulated a term then a minimum term of twelve (12) months shall apply. In all instances can ABS or the Supplier give notice of termination of the Agreement in consideration of a notice period of three (3) months prior to the expiry of the current term. If (timely) notice of termination has not been given then the agreement is automatically renewed for a period of twelve (12) months.

14.2 Without prejudice to any other provision in the Agreement, each Party shall be entitled to dissolve the Agreement either in whole or in part, without any prior notice of default or judicial intervention being required, in the event of and at the moment that:

(a) the other Party files for or is granted suspension of payment for payment of its debts or reaches agreement with various debtors about suspension of payment or settlement of its debts which can have a negative effect on the financial or other position of the first Party or on (possible) claims;

(b) the insolvency / bankruptcy of the other Party is filed for or granted;

(c) goods that were supplied by or on behalf of the other Party in connection with the Agreement are attached and the attachment is not lifted in the short term;

(d) the other Party is a legal person and is dissolved;

(e) the control in the other Party is transferred to a third party and as a consequence thereof continuation of the Agreement can within reason no longer be requested; and/or

(f) the other Party fails to timely or correctly comply with any material obligation by virtue of the Agreement and said failure is not remedied within a time limit of thirty days after a written notice of default has been given, with the understanding that said non-compliance with a material obligation during the implementation of the Agreement can only result in dissolution of the Agreement to the extent that said dissolution is justified by the seriousness of the failure.

14.3 ABS is moreover entitled to dissolve or terminate the Agreement in accordance with the first sentence of the previous paragraph of this article if the Supplier repeatedly exceeds the stipulated delivery periods.

#### **15. Other provisions**

15.1 Within the framework of this Agreement ABS and the Supplier act as independent parties and each personally bears the consequences of the rights and obligations deriving from the Agreement for each Party. With this Agreement the Parties do not establish a company, partnership or the like and the Parties shall not create any impression of a kind vis-à-vis third parties.

- 15.2 The Supplier is not allowed to transfer its rights and obligations by virtue of the Agreement, the thereto connected or there from deriving agreements to a third party without the prior approval in writing of ABS.
- 15.3 If the Supplier can within reason during a period exceeding one week, as a result of circumstances that cannot be blamed on the same, not comply with its obligations by virtue of the Agreement and the agreements and/or orders originating there from, ABS shall be entitled to dissolve the Agreement, the agreements and/or the orders, at its sole discretion either in full or in part, without being held to pay any compensation. Circumstances within the meaning of this article shall, among other things, include industrial action, weather conditions, natural disasters, government regulations and import and export restrictions as a result of which the transport and the delivery of the Products is affected either directly or indirectly.
- 15.4 The working language between the Parties is English, unless stipulated otherwise by and between the Parties. All correspondence, invoices, product specifications and other documents to be exchanged must be drawn up in the English language.
- 15.5 If ABS has goods of the Supplier in its possession then it is entitled to keep these goods in its possession if it has a claim vis-à-vis the Supplier. When the Supplier has paid the claim then ABS shall release the goods to the Supplier.

## **16. Applicable law and competent court**

- 16.1 Dutch law is exclusively applicable to this Agreement and the agreements originating there from. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is expressly excluded.
- 16.2 Disputes deriving from or connected with this Agreement and the agreements or orders connected there with or originating there from are exclusively brought to the cognisance of the competent Dutch court in Utrecht, without prejudice to the right of ABS to call upon the competent court in the jurisdiction where the Supplier resides.

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