



For the purpose and use in all contractual relationships between enterprisers/contractors, legal entities of public law and special property of public law (in the following referred to as "supplier") and an enterprise of the Knorr-Bremse group (in the following referred to as "customer").

### **1. Applicable condition**

The legal relationships between supplier and customer are exclusively based upon the following Terms and Conditions of purchasing.

Opposed terms and conditions shall be hereby expressly contradicted.

The unconditional acceptance of goods/products or services (in the following consistently referred to as "product" or "delivery item") or the payment by the customer without contradiction shall in no case deemed to be an acceptance of the General Terms and Conditions of the supplier.

These General Terms and Conditions of purchasing shall also apply to all and any specific future business transactions of this kind with the supplier.

### **2. Order**

Supply agreements (orders and acceptance) as well as delivery calls and/or schedules need written form.

Orders and delivery calls can also be executed in text form (fax, e-mail, web-EDI).

Oral agreements after the conclusion of the contract, in particular additional subsequent changes and supplements to our General Terms and Conditions of purchasing as well as subsidiary agreements are requiring written confirmation of the customer.

Estimates of costs shall be binding and free of charge.

The customer is entitled to claim reasonable changes and modifications to the delivery item as regards construction and design. The consequences, in particular concerning the additional and/or reduced costs as well as the dates of delivery shall be appropriately regulated by mutual agreement.

If the supplier does not accept the order within two weeks from purchase order date, the customer shall be entitled to cancellation.

If these General Terms and Conditions are included into a framework agreement, a single contract being based on this framework agreement also comes into force, even if the supplier does not immediately and reasonably contradict a delivery call; the deadline mentioned in the delivery call has to be met.

The "Quality Management Directives for the Procurement" are an integral part of the contract.

### **3. Prices, Payment**

Without special agreement, the prices shall be deemed to be delivered duty paid "ex works" (DDP according to the Incoterms 2000), including packaging. If the supplier has taken on the installation or the assembly, he shall bear all necessary additional charges and expenses, except when otherwise stipulated in written form.

Unless otherwise agreed, the customer shall pay within 90 days from maturity of the remuneration claim and upon receipt of a proper invoice as well as upon performance and/or delivery of the contractual object and services. Any payment shall be executed under reserve of subsequent invoice verification.

In case of acceptance of premature deliveries or services (in the following referred to as "delivery") the remuneration claim becomes due at the earliest after the agreed payment date, in case of doubt at the earliest after the agreed date of delivery. The assertion of expenditure claims, in particular as regards storage costs, remains reserved.

### **4. Delivery and Terms, Delayed Delivery, Damage lump-sum Payment**

Agreed deadlines and terms shall be binding. Decisive for the observance of the date of delivery or the term of delivery is the arrival (of the product) at the agreed address of delivery stated by the customer (place of fulfilment/delivery). Unless otherwise agreed, delivery shall be deemed to be duty paid "ex works" (DDP according to Incoterms 2000). For the rest, the supplier shall arrange things with the forwarder of the customer.



Partial deliveries and premature deliveries are not permitted, unless the customer has expressly agreed to these.

The unconditional acceptance of the delayed delivery or service does not include a waiver of any claims, which the customer is entitled to, due to this delayed delivery;

If the agreed deadlines are not met, the legal provisions shall apply respectively. If the supplier foresees difficulties which could keep him from the delivery in due time or from the delivery in the agreed quality, he has to inform the customer immediately, stating the respective reasons. In addition, the customer shall, in case of any default by the supplier, be entitled to require a damage lump-sum of 0,5 % of the value of the delayed object of delivery, maximum 5 % of the whole order value per started week from the deadline exceed. Regarding compensation claims due to an excess of the delivery date, the damage lump-sum shall be taken into account. The damage lump-sum can be asserted up to the entire payment of the agreed price.

The supplier bears the fulfilment risk up to acceptance by the customer or his representative or agent at the place to which the product has to be delivered, as ordered.

The supplier provides for an entire outgoing-goods inspection for the purpose of securing supplies with "zero-error-quality". An incoming goods inspection only and solely takes place with regard to damages which are identifiable from the outside and/or divergences in identity and amount. The customer will immediately reprimand such defects. Other defects are reprimanded as soon as they are ascertained according to the circumstances of a proper course of business. In this respect, the supplier renounces the objection of the delayed notice of defects.

Regarding the software which belongs to the scope of supply and services including its documentation, the customer has the free, irrevocable and within the Knorr-Bremse group negotiable right of use, according to a contractual use of the contractual object. He may also make a backup copy without explicit agreement.

If required and upon request of the customer, the parties will agree on the implementation and installation of a consignment stock.

## **5. Nondisclosure**

All and any information made available and accessible by the customer, as long and as far as not demonstrably publicly know, has to be kept in strict confidence vis-à-vis third parties. It remains the exclusive property of the customer and is only made available in the company of the supplier to such persons, who must be necessarily consulted for the purpose of delivery to the customer and who are also obliged/sworn to secrecy. Without previous written consent of the customer, such information - except for deliveries to the customer him-/herself - must not be reproduced or commercially used. On request of the customer, all and any information coming from him/her has to be returned without undue delay, immediately and completely, regardless of the form or embodiment, or to be destroyed, in connexion with the handing over of a respective written notice.

The customer reserves all his/her rights in such information (including copyrights and the registration right regarding industrial property rights). As far as the customer has obtained such information from third parties, this reservation also applies in favour of these third parties.

The products which are fabricated according to the documents designed by the customer, such as drawings, sample models and things like that, or according to his confidential information or with his tools and/or reproduced tools may neither used by the supplier nor be offered or delivered to third parties. In turn, the aforementioned is also applicable to print orders.

The contractual partners may only and solely recruit customers with previous written approval of their business connexion/relationship.

## **6. Inventions, Property rights**

In know-how that is capable of being protected and inventions of the supplier which are forming the basis of the contractual object or are embodied in it or have originated from development performances during the contractual relationship, the supplier already hereby grants the customer a free, transferable and



temporarily unlimited right to use. The supplier makes organizationally sure that he can meet his obligation regarding the grant of use.

The supplier knows, that the products of the customer are used worldwide. He commits himself to immediately inform the customer of the use of published and unpublished, own and licensed protective rights and protective right registrations in the delivery item.

## **7. Packaging, Bill of Delivery, Invoice, Product Origin**

The contractual object has to be packed according to the regulations of the packaging manual of the customer.

Relating to each shipment a bill of delivery and a separate invoice has to be handed over to the customer.

They must contain supplier's number, date and number of the order or the delivery call/schedule and purchase conclusion, scope and material number, number and date of the bill of delivery, gross weights and net weights specified individually, additional data of the customer (e.g. place of unloading) as well as the agreed price/quantity units. A bill of parcels with precise table of contents must be added to each delivery, stating the order number.

If the invoice is referring to different orders, the information stated under section 7.2 has to be stated for each order separately. The invoice may only refer to the bill of delivery.

A supplier located within the European Union has to document to the customer the country of origin of the product by a so called long-term supplier's declaration, and a supplier not resident within the EU by a proof of preference or by a certificate of origin. The customer has to be informed of any changes regarding the country of origin of the product immediately and without request. The supplier releases and indemnifies the customer from all and any costs which are arising as a result of incorrect, incomplete or deficient origin statements or origin documents.

## **8. Force Majeure**

1. Force majeure, labour/industrial disputes, unintentionally operational disturbances, riots, official measures and other inevitable events are entitling the customer - regardless of his other rights - to withdraw from the contract entirely or partially, as far as they entail a considerable reduction of his need and if they are not of negligible duration.

## **9. Liability for Defects**

The legal provisions regarding material defects and deficiency in title shall apply, unless otherwise expressly regulated in the following.

The customer is entitled to choose the kind of supplementary performance.

If the supplier does not immediately, within a time limit to be set by the customer, begin with the removal of the defects, the customer may carry out the removal at the supplier's expenses himself or may allow a third party to remove the defects. If it is not possible to the customer to inform the supplier of the defect and the impending damage once again and to set him a time limit due to special urgency, in particular because of the defence of acute dangers and/or substantial damages, he shall also be entitled to own remedy without any deadlines.

The warranty expires 24 months after final startup by the end customer, however, at the latest 36 months after delivery to the customer.

Regarding parts repaired within the period of warranty or additionally delivered parts of the delivery, the warranty period shall begin with completely fulfilled supplementary performance once more. However, this shall only apply to the extent, as repair and subsequent deliveries are not negligible as regards scope, duration or costs.

Costs of the customer as a result of defective delivery of the contractual object, in particular handling, transport/shipment, travel, work and material expenses and costs, installation and rebuilding costs, costs for incoming components inspections exceeding the usual scope and extent as well as costs which the customer has to take over for his own clients due to legal obligation shall be beared by the supplier.



In case of deficiency in title, in particular also in case of a breach of protective rights of third parties, the supplier releases and indemnifies the customer and his client from claims of third parties and refunds the costs which the customer has to bear due to a necessary and appropriate legal defence resulting in connexion with third party infringement. A statutory limitation period of 7 years shall apply to deficiency in title.

If the customer takes back products, that are fabricated and/or sold by him, as a result of the deficiency of the subject matter of the contract delivered by the supplier or if the remuneration of the customer was reduced, thus, or further claims have been made on him otherwise, he reserves himself the claim to damages ("regress") against the supplier.

#### **10. Other Liability**

If claims have been made on the customer due to product liability, the supplier releases and indemnifies him/her, provided that and as far as the damage has been caused by a deficiency in the contractual object. Nevertheless, in case of liability regardless of negligence of fault, this shall only apply, if the supplier is responsible for the deficiency/defects. Provided that the damage cause lies in the sphere of responsibility of the supplier, he is bearing the burden of proof in this respect. In these cases, the supplier takes over all and any costs and expenditures, including the costs of any possible legal prosecution.

The supplier commits himself to the conclusion and proof of a company liability insurance and product liability insurance inclusive of damages of the extended product liability as well as recall costs with an insurance provider, who is authorized within the area of the European Union. The sum insured must amount as regards the fields personal injury, property damage and the field of the extended product liability and recall costs in each case to at least EUR 5 millions.

The supplier is liable for measures of the customer as regards damage defence (e.g. product recall), as far as he is bound by law and/or by contract.

#### **11. Third Party Property Rights**

The supplier guarantees, that no protective rights of third parties are opposed to the contractually agreed use of the delivery item.

As far as the supplier has to be blamed for a protective law infringement, he releases and indemnifies the customer from all and any claims of third parties against him, whether these are raised judicially or amicably out of court, including the costs of a necessary and appropriate legal defence resulting from a protective law infringement and incurring to the customer.

Furthermore, the contractual partners immediately inform themselves of known infringement risks and supposed injury cases and give themselves the opportunity to jointly counteract against the respective claims.

#### **12. Assignment and Set-off**

Without previous written approval, which must not be unreasonably refused, the supplier cannot transfer his claims against the customer or allow third parties to collect/assert these.

The customer is entitled to withhold payments on the basis of counterclaims or to assert the set-off.

#### **13. Property/Ownership**

An extended or enlarged retention of title of the supplier requires to its effectiveness an expressive separate agreement.

The materials provided by the customer remain his property and may only be used in accordance with the requirements. The processing of materials and the assembly of parts are carried out for the customer. He shall be proportionally to the value of the supplies to the value of the whole product a co-owner of the products fabricated by using his materials and parts, which are stored for the customer in this respect by the supplier.



#### **14. Quality and Documentation**

The supplier has, regarding his delivery, comply with the current state of science and technology, the safety regulations as well as with the agreed technical data. He must establish and proof an appropriate quality management.

The supplier must record in his quality documentation, regarding all and any products, when, how and by whom their production-free of defects-was guaranteed. These proofs must be stored for 15 years from the last putting on to the open market of the end product by the customer and to present these to him, if required. The supplier is entitled to the shortening of the retention period if he can exclude dangers for life and health while using the products. The supplier has to oblige pre-suppliers within the scope of the legal possibilities to the same extent.

For the rest, it is referred to section 2.7 regarding quality and documentation.

#### **15. Disposal of Waste Electrical and Electronic Equipment**

The provisions of the EU Waste Electrical and Electronic Equipment Directive (WEEE), as far as applicable in the present business process in each case, have to be observed, as amended.

#### **16. Safety and Environmental Protection**

Packages have to be created in such a way so that they are easily separable and recycleable, mixed packagings are avoided as well as materials from naturally growing/renewable raw materials are used. Appropriate product information and material information has to be provided.

Persons performing work in the factory premises of the customer in fulfilment of the contract have to observe the respective applicable regulations for security and environment protection in each case.

Liability for accidents which are happening to these persons on the work area is excluded, as far as these were not caused by intentional or grossly negligent breach of duty by the legal representatives or servants of the customer.

For the rest, it is referred to section 2.7 regarding safety and environmental protection.

#### **17. Spare parts and Preparedness to deliver**

Unless otherwise regulated, the supplier is obliged to deliver spare parts for the period of the usual technical use, at least however, 15 years after the last delivery of the delivery item under appropriate conditions.

#### **18. Final provisions**

Place of jurisdiction regarding all and any civil disputes arising indirectly or immediately from contractual relationships concerning which these Terms and Conditions of Purchasing are forming the basis shall be the court competent in the subject matter as well as the legal venue of the customer, to the extent and as far as permitted by law. Furthermore the customer is, at his own option, entitled to sue the supplier at the court of his residence or registered office or at the place of performance.

Exclusively Austrian law shall apply to the contractual relations, to the exclusion of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

If a contractual partner stops his/her payments or in case of insolvency proceedings are opened against his/her assets or judicial or extrajudicial settlement proceedings are applied, the other partner is entitled to withdraw from this part of the contract that has not been fulfilled.

Should any provision of these Terms and Conditions of Purchasing and/or the further executed agreements be or become invalid or ineffective, the validity of the remaining provisions of these Terms and Conditions of Purchasing shall remain unaffected thereby. The contractual partners are obliged to replace the ineffective provision by such a provision, which comes as close as possible to the economic purpose and result of the invalid provision.

***(If you don't understand German, please ask for the English version. By not doing so, you accept the German version as applicable.)***