



## **General Terms and Conditions (of Delivery and Payment) of Motorparts Vertriebs GmbH, Carl-Benz-Ring 20, 53859 Niederkassel**

These General Terms and Conditions apply exclusively to deliveries of goods and services associated with commissions and orders submitted by customers to Motorparts Vertriebs GmbH, Carl-Benz-Ring 20, 53859 Niederkassel.

### **1. Preamble**

These General Terms and Conditions of Business become an integral part of every contract when an order is placed by the customer or a contract is concluded between the customer and Motorparts Vertriebs GmbH, unless other conditions have been expressly agreed between the parties. Any other general terms and conditions of business of the customer or of a third party that deviate from the terms and conditions herein are herewith expressly invalidated. Alternative terms and conditions shall be binding only if these have been expressly accepted by an appropriately authorised employee of Motorparts Vertriebs GmbH.

### **2. Offers/Conclusion of contracts**

2.1 Offers of Motorparts Vertriebs GmbH are exclusively designed for merchants as defined in Art. 14, German Civil Code (BGB), i. e. private persons, legal entities or private companies with legal capacity that, when placing the order, are engaged in business or autonomous commercial activities. Only the above will be considered 'customers' to whom these General Terms and Conditions apply.

2.2 Commissions and orders submitted by customers to Motorparts Vertriebs GmbH will be considered binding offers. However, a contract that is binding on Motorparts Vertriebs GmbH does not come into effect until a written order confirmation has been supplied by Motorparts Vertriebs GmbH or until performance of the delivery or service. If Motorparts Vertriebs GmbH has submitted an offer to the customer concerning the supply of goods or performance of a service, the contract relating to this delivery or service becomes effective on acceptance of the offer by the customer.

2.3 Blueprints, dimensions, weights or other performance specifications are only binding when these have been expressly approved.

2.4 If articles are to be produced by Motorparts Vertriebs GmbH on the basis of blueprints supplied by the customer, the blueprints created by Motorparts Vertriebs GmbH and approved by the customer shall be considered definitive. If the customer has approved blueprints or samples, the permissible deviations from the former are to be separately agreed; any additional costs thereby incurred shall be borne by the customer.



2.5 Tools and devices produced by Motorparts Vertriebs GmbH shall remain the property of Motorparts Vertriebs GmbH, irrespective of how the related costs are apportioned. Motorparts Vertriebs GmbH is obligated to retain any tools for a full 3 years after the last delivery to the customer. If the customer gives binding notice before expiry of this period that further orders for delivery will be placed within a year, Motorparts Vertriebs GmbH is also obligated to retain the tools in question for this period. Motorparts Vertriebs GmbH shall be otherwise permitted to dispose of the tools and devices at its own discretion,

### **3. Prices**

3.1 All Motorparts Vertriebs GmbH's prices are quoted in euros, net of VAT at the current statutory rate, unless otherwise specified. Motorparts Vertriebs GmbH accepts no responsibility for obvious spelling, arithmetical or printing errors and other errors in its price list. The agreed prices applicable on the date of the award of the order shall apply. Motorparts Vertriebs GmbH reserves the right to require the customer to make an advance payment.

3.2 All prices are quoted ex works, excluding shipping/transport. Any costs incurred for transport and/or transport insurance shall be borne by the customer.

### **4. Delivery**

4.1 Delivery dates and periods are never binding unless otherwise expressly so agreed.

4.2 The risk of accidental loss of a consignment is transferred to the customer as soon as the shipment is handed over to the carrier responsible for delivery. The costs of delivery shall be borne by the customer.

4.3 Motorparts Vertriebs GmbH shall be released from the binding obligation to supply within agreed periods or by agreed dates in cases of force majeure, i.e. in the event of war, riot, operational disruptions, strikes, lock-outs, official or judicial injunctions or problems in acquiring materials, even if such events directly affect Motorparts Vertriebs GmbH's suppliers only. Should a related delay be longer than eight weeks, the customer shall be entitled to withdraw from the contract in respect of the as yet unfulfilled part thereof after a reasonable period of grace has been observed. Motorparts Vertriebs GmbH will not assume liability for claims for losses arising as a result of force majeure if it had notified the customer of the delay immediately on occurrence of the force majeure event, of the prospective duration of the delay, and the delay is not attributable to intentional or grossly negligent actions on the part of Motorparts Vertriebs GmbH or its agents. Should the customer withdraw from the contract, Motorparts Vertriebs GmbH must immediately reimburse any (part) payments already made by the customer.

4.4 Motorparts Vertriebs GmbH is entitled to make part deliveries or provide part performance of services unless the customer cannot be reasonably expected to accept these due to the non-usability of the part delivery or part performance.



4.5 Should the customer excessively delay acceptance of a shipment or violate its contractual obligations to actively cooperate with Motorparts Vertriebs GmbH, Motorparts Vertriebs GmbH shall be entitled to demand compensation for any consequential losses and additional expenses incurred as a result. In this case, the risk of accidental loss or deterioration of the shipment is transferred to the customer at that point in time at which the customer is in default of acceptance.

## **5. Terms of payment**

5.1 Invoices are payable within 30 days of date and are to be paid in full and charge-free to the account nominated by Motorparts Vertriebs GmbH. Cheques and bills of exchange shall be accepted on account only.

5.2 In the event of a delay in payment, Motorparts Vertriebs GmbH shall be entitled to claim interest on the outstanding payment at the statutory rate and to require prepayment before supplying any further deliveries and services to the customer.

5.3 The customer is only entitled to withhold payments on the basis of any claims arising from the same contractual relationship.

## **6. Warranty**

6.1 The limitation period for claims relating to defects is 1 year only. This period commences on the date of shipment, i.e. on the date of acceptance by the purchaser.

This limitation does not apply to claims arising as a result of death, physical injury or damage to health occurring because of intentional or grossly negligent violation of obligations on the part of Motorparts Vertriebs GmbH or its legal representatives or agents and other claims for damages that arise because of intentional or grossly negligent violation of obligations by Motorparts Vertriebs GmbH, its legal representatives or agents.

6.2 The warranty does not extend to the rectification of defects arising as a result of inappropriate modifications made by the customer or failure to comply with the operating and installation instructions.

6.3 In the case of commercial transactions, Art. 377 of the German Commercial Code (HGB) applies to the obligations of the customer to provide notification of defects.

6.4 A new warranty period shall not commence on the replacement of components or the replacement of articles.

6.5 In the case of all defects that arise during the statutory warranty period, Motorparts Vertriebs GmbH shall decide at its own discretion whether to comply with the statutory requirements for subsequent remedy, rectify the deficiency or supply a replacement. If the statutory conditions are fulfilled, the customer shall also be entitled to claim reduction or rescission as well as compensation, and demand compensation in place of performance and reimbursement of any unnecessary expenditure.



6.6 The following special conditions apply to articles manufactured by means of forging: externally identifiable faults shall be considered deficiencies only if the forged product is in its original delivery state, i.e. before it has been heated or shaped by machining. Internal faults that are not identified until the piece has been machined or put into use shall be considered deficiencies only if the fault was not caused by machining or by putting into use.

6.7 In situations other than the above, the statutory provisions shall apply.

## **7. Disclaimers**

7.1 Motorparts Vertriebs GmbH assumes unlimited liability under the statutory provisions for any harm to life, limb and health that occurs as a result of negligence or intentional violation of obligations on the part of Motorparts Vertriebs GmbH, its legal representatives or agents, as well as for claims that fall within the scope of its liability under the German Product Liability Act. In the case of claims that are not covered by section 1 and which arise as a result of intentional or grossly negligent violation of contractual obligations or malice aforethought on the part of Motorparts Vertriebs GmbH, its legal representatives or agents, Motorparts Vertriebs GmbH's liability shall be limited to that specified in the statutory provisions.

7.2 In the case of claims arising as a result of the absence of a guaranteed property that is not a direct characteristic of a product, Motorparts Vertriebs GmbH shall be liable only if the related risk is obviously covered by the quality warranty.

7.3 Motorparts Vertriebs GmbH shall be liable for all claims that arise as a result of minor negligence on its part, insofar as the claim relates to the infringement of entitlements that are to be extended to the customer in accordance with the contents and purpose of the contract and/or to the infringement of obligations without whose proper fulfilment the contract cannot be performed and whose observance the customer would and can normally expect (cardinal obligations).

7.4 Motorparts Vertriebs GmbH accepts liability for no other claims, irrespective of the legal nature of the claim. In particular, Motorparts Vertriebs GmbH accepts no liability for consequential losses, lost profits, pecuniary losses and other losses not directly related to the products themselves, provided that these do not arise as a result of an intentional or grossly negligent violation of obligations on the part of Motorparts Vertriebs GmbH, its agents or legal representatives.

7.5. If an article is produced by Motorparts Vertriebs GmbH on the basis of a template or blueprint supplied by the customer, the customer shall be solely liable for any infringement of the rights of third parties that results from the marketing of said article. If claims are lodged against Motorparts Vertriebs GmbH by a third party in connection with an article produced by Motorparts Vertriebs GmbH on the basis of a template or blueprint supplied by the customer, the customer shall assume, on first demand, all liability on behalf of Motorparts Vertriebs GmbH for such claims.



## 8. Retention of title

8.1 All shipments and services are subject to retention of title. If the customer is a merchant as defined in the German Commercial Code, the title to goods shall be retained by Motorparts Vertriebs GmbH until all its claims against the customer have been settled.

8.2 The customer is entitled to resell the goods as part of its normal business activities. In this case, however, the customer must assign to Motorparts Vertriebs GmbH - insofar as this is legally permitted – all entitlements resulting from the resale to their full extent by way of security.

8.3 The customer is revocably empowered to collect the entitlements assigned to Motorparts Vertriebs GmbH for the account of Motorparts Vertriebs GmbH in its own name. This right of collection can only be revoked if the customer fails to fulfil its payment obligations in an orderly fashion. Motorparts Vertriebs GmbH is obliged to release the securities to which it is entitled when their value exceeds that of the entitlements to be secured by more than 20%, assuming that these entitlements have not yet been met.

8.4 Motorparts Vertriebs GmbH is entitled to notify the debtor of the assignment of entitlements in writing. The customer is also obligated to do so should Motorparts Vertriebs GmbH so request. If the goods subject to retention of title are impounded, the customer shall immediately notify Motorparts Vertriebs GmbH of this and shall notify the relevant third parties of Motorparts Vertriebs GmbH's entitlements and provide Motorparts Vertriebs GmbH with all the documentation it requires to enforce its entitlements. The costs incurred by Motorparts Vertriebs GmbH as a result of the impounding of goods shall be borne by the customer.

8.5 Any processing or modification of such products by the customer shall be considered to be performed for and on behalf of Motorparts Vertriebs GmbH. If such products are processed together with other products that do not belong to Motorparts Vertriebs GmbH, Motorparts Vertriebs GmbH shall acquire co-ownership of the resultant new article in the proportion which the value of the product represents in comparison with the value of the other products at the time of processing. Otherwise, the same requirements shall apply to resultant products as apply to articles for which Motorparts Vertriebs GmbH retains the title.

8.6 If the product is permanently combined with other products that do not belong to Motorparts Vertriebs GmbH, Motorparts Vertriebs GmbH shall acquire co-ownership of the resultant new article in the proportion which the value of the product represents in comparison with the value of the other products at the time of combination. If the combination is such that the customer's product is to be regarded as the primary component, it is herewith agreed that the customer will transfer a *pro rata* share of the ownership to Motorparts Vertriebs GmbH. The customer is responsible for maintaining the rights of Motorparts Vertriebs GmbH with regard to sole ownership or co-ownership of products.

8.7 The customer also assigns all claims against third parties to Motorparts Vertriebs GmbH that result from the instalment of the product at a premises.

8.8 Motorparts Vertriebs GmbH reserves all rights of ownership and copyrights to illustrations, drawings, calculations and other documentation; these may not be made available to third parties. This applies in particular to such written documents that are marked as "confidential".



The customer must obtain Motorparts Vertriebs GmbH's express written agreement making these available to third parties.

### **9. Export controls**

If a licence is required before certain products can be exported, the customer is solely responsible for obtaining the export licence and for the associated costs. Furthermore, the customer undertakes to observe and respect the export regulations of the respective countries of export.

### **10. Place of performance and jurisdiction/Applicable law**

10.1 The place of performance is Niederkassel. The place of jurisdiction is Siegburg/Bonn if the customer is a merchant as defined in the German Commercial Code, an entity subject to public law or a special fund under public law or has no general place of jurisdiction in Germany.

10.2 These terms and conditions are exclusively governed by the laws of the Federal Republic of Germany. The stipulations of the UN Convention on the International Sales of Goods shall not apply.

### **11. Salvatory clause/Requirement for written form**

If any of the provisions of these General Terms and Conditions of Business are invalid or become so, this shall have no effect on the validity of the remaining provisions. Any invalid provision shall be replaced by a provision or arrangement that comes as close as possible to meeting the intended purpose of the invalid provision. The same shall apply to any contractual loopholes.

Niederkassel, June 2012