

## BorgWarner's General Terms and Conditions of Purchase for Germany

### I. General, Offer, and Acceptance

1. Unless otherwise stated on the face of the Purchase Order, and subject to Buyer's termination rights, the Purchase Order is a requirements contract under which Buyer will purchase and Seller will sell all (or, if multiple sourced, a specified percentage or range of Buyer's requirements as stated on the face of the Purchase Order) of the goods or services specified for the length of the applicable manufacturer's program production life (including extensions and model refreshes) as determined by the original equipment manufacturer or, if applicable, by Buyer's Customer.
2. Written acceptance of the present Terms and Conditions, or commencement of performance of any work or services pursuant to a Purchase Order, will constitute acceptance of the Terms and Conditions. Such acceptance is limited to and constitutes Seller's acceptance of the Terms and Conditions exclusively.
3. All terms and conditions proposed by Seller that are different from or in addition to this Purchase Order are expressly rejected by Seller. No purported oral agreement or other understanding that attempts in any way to modify the conditions of the agreement resulting from this Purchase Order will be binding upon Buyer. Any reference on the face of the Purchase Order to Seller's quote or other prior communication does not imply acceptance of any term, condition or instruction therein, but is solely to incorporate the description or specifications of the goods or services to be supplied to Buyer, and only then to the extent that such description or specifications are not in conflict with the description or specifications on the face of the Purchase Order.
4. Solely the written order shall be relevant for the execution of the order. Seller shall confirm any such written order without undue delay. The parties have not entered into any oral collateral covenants. Any subsequent changes shall be subject to our written confirmation to take legal effect. The written form can be replaced by fax, but not by the electronic form pursuant to § 126 a of the German Civil Code (BGB) or the text form pursuant to § 126 b BGB.
5. In compliance with EC regulations concerning the common definition of the origin of goods, all order confirmations shall contain a reference to the origin of the goods.

### II. Prices, Payment Conditions, and Taxes

1. The Purchase Order must not be filled at prices higher than those specified on the Purchase Order, unless otherwise agreed to in writing by the Buyer.
  - a) The price specified on the Purchase Order includes all subcontracting costs associated with this Purchase Order. Buyer will have no responsibility for any increased costs incurred by Seller in connection with any third party services or goods, raw materials or subcontractors, unless such additional costs have been negotiated and agreed to in advance and in writing by Buyer.
  - b) Unless otherwise agreed to in writing by the Buyer, the price specified on this Purchase Order includes all charges for packing, cartage, storage, drayage, and transportation to DAP (incoterms 2010). Seller shall pay all delivery charges in excess of that which Buyer has agreed in writing to pay.
2. a) All prices quoted in the order shall be exclusive of the value added tax at the applicable rate at any given point of time. All payments made under this agreement shall be free of any taxes, duties, levies, fees or other charges, except for withholding taxes. All public charges (taxes, fees, duties, etc.) which are incurred in connection with the conclusion or execution of this agreement outside the Federal Republic of Germany shall be borne by Seller.
  - b) Where any sum due to be paid hereunder is subject to any withholding taxes, the Parties are obliged to use commercially reasonable efforts to do all acts and to sign all documents that will enable them to take advantage of any applicable double taxation agreement or treaty. In the event that there is no applicable

double taxation agreement or if an applicable double taxation agreement or treaty reduces, but does not eliminate withholding taxes, the paying Party is obliged to deduct withholding taxes from payment and pay the tax to the appropriate government authority, deduct the amount paid from the amount due to the receiving Party and secure and send the best available evidence of the payment to the receiving Party.

3. Seller warrants that the prices specified in the Purchase Order are no less favorable than prices given by Seller to any other customer for like goods or services after consideration of all discounts, rebates and allowances and under like circumstances. If Seller quotes a lower price to anyone or accepts payment of a lower price from anyone during the life of this contract, Seller will agree to charge Buyer that lower price with respect to any quantity undelivered under this Purchase Order. If Buyer is quoted a lower price by someone other than Seller, and Seller does not wish to meet the lower price, Buyer may purchase any undelivered quantity under this Purchase Order at the lower price, thereby canceling this Purchase Order with no further liability to Seller for such undelivered quantity.

4. Seller warrants that the prices will comply with all applicable governmental laws, rules, regulations and orders.

5. Seller shall promptly render after delivery of goods or performance of services, correct and complete invoices to Buyer and invoices shall be sent in duplicate and separately from the delivery. Seller shall quote the specifications of our order and the order number indicated therein.

6. Payments shall be made by electronic transfer of funds or, at Buyer's discretion, other cash equivalent (including purchase cards or check), bill of exchange or bank remittance. Payment shall be deemed effected in due time when the check or bill of exchange has been sent by mail on the due date or, as the case may be, the remittance has been ordered with the bank on the due date.

7. Payment shall be due on the 2nd day of the 2nd month following the date Buyer receives the goods or services, but in no event later than 60 days after delivery of the goods and/or services and an orderly invoice as usual in the automotive industry, except as may otherwise be agreed by the parties in writing if legally permissible.

8. In the event of default of payment Buyer shall be liable for default interest in the amount of 5% above the base interest rate as defined in Section 247 of the German Civil Code (BGB).

9. a) All amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer.

b) Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances, and claims on the goods or services provided under this Purchase Order.

c) Buyer shall be entitled to the statutory setoff and retention rights. Buyer may set off against or recoup from any amounts due or to become due to Seller, any amounts due or become due from Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Seller until such obligation is resolved.

d) Buyer shall also be entitled to set off accounts receivable against affiliated companies of Seller within the meaning Section 15 of the German Stock Corporation Act (AktG) against Seller's claims for payment.

e) Further, in the event Buyer reasonably feels itself insecure or at risk due to facts that create reasonable doubt regarding the conforming performance according to the agreement, Buyer may withhold and recoup a corresponding amount due Seller to protect against such risk.

### **III. Delivery, Risk of Loss**

1. a) Deliveries must be made both in quantities and at times specified on the face of this Purchase Order or in Buyer's delivery schedules and time is of the essence.

b) Buyer's delivery schedules are an integral part of the Purchase Order, are governed by these terms and conditions and are not independent contracts.

c) Decisive for the observance of the delivery period shall be the receipt of the goods in compliance with the agreement at Buyer's premises or other place of delivery as stated on the Purchase Order. No special declaration of default shall be required.

d) Seller shall be obligated to notify us in writing immediately in the event circumstances occur or become evident for Seller which make it obvious that the agreed delivery period cannot be observed. In case Seller fails to do so, Seller shall also be liable for such delays in delivery for which he is not responsible.

2. Partial deliveries shall not be accepted as performance. Any delivery exceeding the quantity specified in the Buyer's delivery schedule on the Purchase Order or in written releases issued by the Buyer shall not entitle Seller to claim payment for the excess quantity until Buyer explicitly accepts such excess delivery or uses the goods for its contractual purposes.

3. a) In the event Seller does not meet a delivery date, Buyer shall be entitled to demand subsequent delivery and claim damages for delayed performance.

b) Unless the delay is due to force majeure, and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified, Seller shall ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount, if any, that Buyer would have paid for normal shipment.

c) Separate agreements on contractual penalties shall become part of Buyer's Purchase Orders. After unsuccessful expiry of a reasonable grace period for delivery, Buyer shall be entitled to claim damages for non-performance or to rescind the agreement.

4. In the event deliveries are made more than two weeks prior to the date specified by Buyer or, as the case may be, agreed with Buyer, Buyer shall be entitled to reject or return the goods or to invoice Seller for the costs incurred thereby (e.g., demurrage, warehouse costs) and to set off Buyer's claim for cost compensation against Seller's claims for payment.

#### **IV. Shipment**

1. Unless provided otherwise in this Purchase Order, all goods are sold DAP (incoterm), shipped free of freight charges and expenses for Buyer, and Seller shall be responsible for and bear the risk of any loss or damage to the goods until received by the Buyer.

2. All shipments of goods must be accompanied by a packing slip, which describes the articles, states the Purchase Order number, and shows the shipment's destination. Seller agrees to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. No charges will be allowed for packing, crating, and transportation unless stated in this Purchase Order.

3. Goods (including any equipment) shipped under the Purchase Order must be shipped without oil or any other fluids and must comply with all applicable, including European, national, and local environmental protection and occupational safety provisions and regulations, including, but not limited to, those dealing with air pollution control, wastewater control, chemical usage, and employee exposure. Seller shall bear all liability for spillage if the shipment does not so comply. To the extent legal provisions on strict liability are applicable, the aspect of fault shall be immaterial.

#### **V. Quality, Inspection of Defects, Warranty**

1. Seller expressly warrants that all goods or services covered by the Purchase Order (i) conform to the Purchase Order, specifications, drawings, samples, and descriptions furnished to or by the Buyer, (ii) are merchantable, of good material and workmanship, and free from defect, (iii) are fit and sufficient for the particular purpose intended by Buyer, and (iv) comply with the latest acknowledged technological and scientific standards, any applicable legal provisions, regulations on the prevention of occupational accidents and any other conditions imposed and regulations issued by authorities. If Seller has participated in the design of the item or approved the design, Seller also warrants that the items are free from defects in design.

Buyer has all statutory rights in case of delayed delivery, defects, and warranty claims. In the event of the delivery with defective goods before start of production, processing, or installation the Buyer has the right to choose between repair, or subsequent delivery with a defect-free new goods, without waiving any other remedies Buyer may have. If such a repair or subsequent delivery with a defect-free new good is not reasonable for the Buyer, or the Seller not able to fulfill such, the Buyer may also rescind from the agreement.

2. Buyer is relying upon the expertise of Seller in the selection, manufacture and integration of the goods or services.

a) If Seller is aware, is made aware or becomes aware that the goods or services are not appropriate for the use intended by Buyer or that the specifications given to Seller by Buyer or Buyer's Customer will result in less than optimal performance of the goods or services, Seller shall immediately notify Buyer.

b) Seller shall also notify Buyer if the location or environment of the goods or services within the vehicle or product will affect their performance or if anything (different than that called out in the prints or specifications) is necessary for the goods to perform for the intended use.

3. As regards the production of the goods to be delivered to Buyer, only such materials and processes may be used respectively applied which comply with environmental protection and safety regulations as applicable at any given point of time.

4. Any modifications of the goods to be delivered shall be subject to Buyer's prior written approval. Seller shall make special reference to any potential improvements and technical modifications.

5. Seller warrants a quality management system according or similar to ISO/TS 16949 and guaranties defect-free shipments. Therefore, § 377 HGB shall be limited to confirmation of the part number, obvious transportation damages, and deficiencies in quantity. Buyer shall notify the Seller in writing about any deficiencies of a shipment as soon as such deficiencies have been discovered in the course of an orderly business practice. Seller is aware that deliveries are time sensitive in the automotive industry and that goods are usually processed immediately so that an incoming good inspection is, if at all, only possible to a very limited extent (as in a skip-lot process). The Seller is also aware that its waiver for such an incoming good inspection at Buyer's has been taken into account in the price agreement. Therefore, the Seller waives his right to reject delayed notification of deficiency.

6. In the event Seller, upon request, does not effect subsequent performance within a granted period or does so only insufficiently, Buyer shall be entitled, at Seller's expense, to remedy defects himself or cause them to be remedied by third parties or carry out replacement purchases of goods. In addition, Buyer, at its option, may rescind the agreement or make price reductions; if warranted features are missing and in the event of defective or wrong delivery due to negligence, Buyer may instead claim damages for nonperformance.

7. Nonconforming or defective goods may be returned to the Seller for, at the Buyer's option, full credit or replacement with new goods at the Seller's risk and expense, including all expenses for labor and materials in dealing with or removing the defective parts, all charges for handling, sorting, packaging and transportation both ways. No replacement of nonconforming goods may be made except as authorized by a replacement Purchase Order signed by Buyer.

8. Warranty claims do not become time barred before the passing of 36 months after passing of risk.

## VI. Liability Insurance Protection

1. Seller hereby undertakes to obtain and maintain product liability insurance coverage with an insurance sum of at least € 5,200,000.00 per personal injury/damage to property without limiting Seller's liability.

2. Seller hereby undertakes to obtain and maintain an extended product liability insurance with an insurance sum of at least € 5,200,000.00 per claim, without limiting Seller's liability.

## **VII. Reservation of Ownership, Provision, Tools, Confidentiality**

1. Buyer hereby expressly reserves title to parts and tools which are provided to Seller or paid for by Buyer. Any processing by Seller shall be conducted on Buyer's behalf. In the event parts title to which has been reserved by Buyer are assembled with other objects which do not belong to Buyer, Buyer shall acquire joint title to the new item in proportion of the value of Buyer's item (purchase price plus value-added tax as applicable at any given point of time) to the other assembled items at the point of time of processing.
2. In the event the item provided by Buyer is inseparably commingled with other goods which do not belong to Buyer, Buyer shall acquire joint title to the new item in the proportion of the value of the item to which title has been reserved (purchase price plus value added tax as applicable at any given point of time) to the other goods at the point of time of commingling. In the event commingling occurs in such a way that Seller's item is to be viewed as the main item, the parties hereby agree that Seller shall transfer joint title to Buyer on a pro rata basis. Seller shall keep the sole or joint property in safe custody on Buyer's behalf.
3. Buyer reserves title to tools and any other supplied parts. Seller shall be obligated to use the tools exclusively for the production of such goods ordered by Buyer. Seller shall be obligated to specifically identify the tools and parts belonging to Buyer as Buyer's property and to insure them at their replacement value against fire, water and theft at his own expense. At the same time, Seller, as of now, hereby assigns to Buyer all claims for compensation from such insurance policy. Buyer hereby accept such assignment. Seller shall be obligated to conduct any necessary servicing and inspection work as well as all maintenance and repair work on Buyer's tools and parts at his expense in due time. Seller shall notify Buyer immediately of any irregularities. In the event Seller culpably fails to do so, any claims for compensation on Buyer's part shall not be prejudiced hereby.
4. Seller shall keep confidential the features of any equipment, tooling, patterns, designs, drawings, plans, materials, models, processes, engineering and business data and other technical and proprietary information (without limitation), furnished, provided or otherwise made accessible by Buyer and shall use such items only in production of goods under the Purchase Orders from Buyer, unless Buyer's written consent is first obtained. Upon termination or completion of the Purchase Order, Seller shall without undue delay return all such items to Buyer or make other disposition, as directed by Buyer.

## **VIII. Liability**

1. Seller shall indemnify, defend, and hold harmless Buyer, its agents, employees, customers, and users of its and their products against any and all suits, actions or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including reasonable attorneys' fees, resulting from the death or injury to any person or damage to any property arising out of or in any way connected with the performance of the Purchase Order by Seller or the goods and/or services provided hereunder, or with respect to matters and allegations that the goods and/or services are defective, unfit or unsafe, or that the goods do not meet applicable laws or regulations, even if the loss results from the concurrent or partial negligence of Buyer.
2. At Buyer's request, Seller shall defend such claims or suits at Seller's expense by reputable counsel satisfactory to Buyer. Seller shall, at its expense, maintain insurance coverage in amounts satisfactory to Buyer for Workers' Compensation, Employer's Liability and Comprehensive General Bodily Injury and Property Damage. Seller shall furnish Buyer with certificates setting forth the amounts of coverage, policy number(s) and expiration date(s).
3. Buyer's sole liability to Seller under the Purchase Order (including its termination, expiration or cancellation) is to pay for the goods and services and to pay the specific termination related amounts described above. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANTICIPATED OR LOST PROFITS, INTEREST, PENALTIES OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES OR LIABILITIES IN CONNECTION WITH THIS ORDER, WHETHER FOR BREACH OF CONTRACT, TORT LIABILITY, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE unless Buyer's liability is based on gross negligence or willful acts.

## **IX. Modification, Suspension, Annulment**

1. At any point of time, Buyer shall be entitled to modify, suspend or annul the order.
2. In the event of annulment, Seller shall cease production of the ordered goods without undue delay and instruct his Sellers accordingly. Seller shall receive the agreed purchase price for goods already finished. In case goods are specifically produced for Buyer, Seller shall receive compensation for the costs he incurred for raw materials and wages, except for any loss of prospective profits, to the extent the amount of such costs is deemed reasonable and may be attributed to the annulled portion of the order on the basis of generally accepted accounting principles. Buyer shall not pay any compensation in case production commenced following a longer start-up period than it would have been necessary to comply with the delivery date specified in the agreement or in case such costs have been incurred after annulment of the order. Nor shall Buyer pay any compensation if the produced goods are part of the customary stocks of Seller or can be easily sold on the general market. Seller's claim for compensation shall extinguish if it is not asserted within a period of 30 days following annulment of the order.
3. In the event of modification or suspension, the parties shall agree upon a procedure aiming at compensating Seller for extra costs incurred by him. Extra costs may only be asserted if they are notified to Buyer in writing within 10 days after Buyer's notification of modification at the latest.
4. In the event termination is based on any termination on part of Buyer's customer, Buyer shall reimburse Seller for such amounts (less our own costs) which Buyer received as compensation. Hours of in-house-work shall be billed at customary hourly rates. No further claims for compensation, particularly for financial losses and lost profits, may be asserted.
5. Buyer has relied upon Seller's agreement to manufacture the goods or provide the services at the price and on the terms stated in the Purchase Order to allow Buyer to fulfill its contract to sell to Buyer's Customer the products that incorporate the goods or services. Consequently, Seller may not terminate this Purchase Order for the length of the applicable manufacturer's program production life (including extensions and model refreshes) as determined by the original equipment manufacturer or, if applicable, by Buyer's Customer, unless for good cause as mandatory laws allow ("außerordentliche Kündigung aus wichtigem Grund").
6. In the event Seller suspends payments or if Buyer reasonably finds Seller's financial situation to endanger uninterrupted delivery, Buyer shall be entitled to rescind the agreement in whole or in part.
7. In the event that an insolvency proceeding over the assets of the Seller is initiated or pending, including a preliminary insolvency proceeding, the Buyer may terminate this agreement in whole or in part.
8. Buyer may immediately terminate the Purchase Order without liability upon the happening of any of the following or any other comparable event: (i) insolvency of the Seller; (ii) filing of a voluntary or involuntary petition in bankruptcy by or against Seller; (iii) appointment of a receiver or trustee for Seller; (iv) any accommodation by Buyer, financial or otherwise, not contemplated by the Purchase Order, that is necessary for Seller to meet its obligations under the Purchase Order; or (v) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment, or assignment is not vacated or nullified within fifteen (15) days after such event. Seller shall reimburse Buyer for all costs Buyer incurs in connection with any of the foregoing whether or not the Purchase Order is terminated, including, but not limited to, all attorneys' or other professional fees.
9. In connection with the expiration, cancellation or termination of the Purchase Order by either Buyer or Seller, in whole or in part, for any or no cause (including, without limitation, Buyer's decision to change to an alternate source for manufacture of the goods in question, including but not limited to a Buyer-owned or -operated facility), Seller will cooperate in the transition of supply. Seller will continue production and delivery of all goods and services as ordered by Buyer, at the prices and in compliance with the terms of the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate Seller(s). Subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of the goods or services, extraordinary packaging and transportation and other special services (collectively, "Transition Support") as expressly requested by Buyer in writing. If resource of the goods or services occurs for reasons other than Seller's termination or breach, Buyer will, at the end of the transition period, pay the reasonable, actual cost of Transition Support as requested and incurred, provided that, upon request, Seller has advised Buyer prior to incurring such amounts of its estimate of such costs. If the

parties disagree on the cost of Transition Support, Buyer will pay the agreed portion to Seller and pay the disputed portion into third-party escrow for disbursement after the dispute has been resolved.

10. Seller shall comply with the applicable terms and conditions of any agreements between Buyer and Buyer's Customer (the "Customer Purchase Orders") pursuant to which Buyer agreed to sell to Buyer's Customer products or assemblies which incorporate the goods provided by Seller hereunder. This provision specifically includes costs and obligations imposed by warranty programs instituted by the original equipment manufacturer that ultimately purchases Buyer's products that incorporate the goods sold by Seller if applicable to Buyer under the terms of the Customer Purchase Order. If Buyer is not acting as a Tier One Seller, the defined term "Customer Purchase Order" shall also include the terms and conditions of the original equipment manufacturer that ultimately purchases Buyer's product that incorporates the goods or services sold by Seller. Seller will be responsible to ascertain how the disclosed terms affect Seller's performance under the Purchase Order. By written notice to Seller, Buyer may elect to disclose and have the provisions of the Customer's Purchase Orders prevail over any term of the Purchase Order at any time.

## **X. Force Majeure**

Neither party shall be held liable if, without any fault on its part and for reasons beyond its control, particularly in the event of force majeure and labor disputes, it is unable to fulfill its obligations set forth in this agreement. Upon occurrence of such circumstance, the affected party shall inform the other party thereof within 10 days and indicate the expected period of disruption of performance of its obligations. In the event such circumstance affects Seller, he shall take any reasonable measure to effect performance of this order, particularly to switch to temporary production sites, including third-party production sites. As long as Seller is unable to effect delivery in due time for said reasons, Buyer shall be entitled to cover its demand from other sources and reduce the order accordingly; such entitlement shall not constitute any claims on the part of Seller. At Buyer's request, Seller shall represent and warrant within a period of 10 days that such delay in delivery will not exceed a term of 30 days. In the event the delay in delivery exceeds a term of 30 days or if Seller fails to submit the requested representation and warranty setting forth that the delay in delivery will not exceed a term of 30 days, Buyer shall be entitled to annul the order without assuming any liability whatsoever.

## **XI. Intellectual and Industrial Property Rights**

1. Buyer reserves title and copyrights with regard to all documents attached to the order. Such documents may not be made accessible to any third party without Buyer's express written approval. Such documents shall be used exclusively for production purposes based on Buyer's order and be promptly returned to Buyer after execution of the order without need of request. Any knowledge obtained in the course of the order shall be kept confidential vis-à-vis third parties.

2. Seller represents and warrants that the goods supplied by him will not infringe any domestic or foreign property rights, that the statutory provisions concerning environmental protection will be observed and that no proceedings regarding liability, regulatory or criminal offences against Seller or Seller's bodies are pending which might influence the execution of the order. Seller shall assume full responsibility in this regard and, to such extent, shall hold Buyer harmless from any claims for damages.

3. Seller represents and warrants that production, utilization or sale of the items delivered to Buyer does not infringe any industrial or intellectual property rights, particularly patents, trademarks, registered designs, copyrights or mask work rights, or industrial secrets.

4. Seller shall indemnify Buyer, Buyer's employees and customers against each and every third-party claim arising from any alleged infringement of industrial and intellectual property rights or external industrial secrets resulting from the production, utilization or sale of the goods delivered to Buyer and to assume any reasonable costs of legal defense. Prior to accepting Buyer's order, Seller shall duly notify Buyer should compliance with Buyer's given specifications result in such rights infringement. In the event he fails to do so, he shall be held liable pursuant to the present section.

5. Seller hereby waives each and every claim raised against Buyer on the basis of any infringement of industrial and intellectual property rights, also to the extent that such infringement is the result of Seller's compliance with Buyer's specifications.

6. a) In the event work performed by Seller under this Purchase Order results in any invention or work of authorship, whether patentable, copyrightable or not, regarding any engine, drive-train, or automotive component or assembly, or the manufacture or use thereof, Seller hereby assigns and shall assign to Buyer all right, title and interest to such invention or work of authorship and to any patents, copyrights or other intellectual property which Seller may obtain thereon.

b) Seller will assist Buyer, at the request and expense of Buyer, in the completion and execution of all documents necessary to obtain such patents, copyrights or other intellectual property and to perfect and record Buyer's ownership thereof.

c) Seller agrees that any such work of authorship which can be construed to be a "work for hire" under the provisions of the United States Copyright Act shall be considered a "work for hire".

d) If the transfer of title to such invention or work of authorship and to any patents, copyrights or other intellectual property which Seller may obtain thereon can legally not be transferred to Buyer, Seller will grant Buyer and any of Buyer's affiliated companies and their respective customers a perpetual, irrevocable, royalty-free, and exclusive license (with the right to sublicense to third parties) to use all such Intellectual Property Rights and Know-How for such purposes. The license shall not entitle the Seller to any further compensation in addition to the consideration provided for in this Agreement.

## **XII. Inspection of Business Records**

During normal business hours, Buyer shall be entitled to inspect through its representatives all documents of Seller as regards performance of the order as well accounting records. In this respect, Seller shall keep all relevant records for a period of at least two years following delivery.

## **XIII. Spare Parts**

As regards goods requiring maintenance or upkeep, Seller shall keep in stock spare parts and sell them to Buyer at fair market prices for a period of fifteen (15) years following final delivery.

## **XIV. Place of Performance and Jurisdiction**

1. The place of performance for all services shall be the operating plant specified in the order.
2. The City of Heidelberg, Germany, shall be the exclusive place of jurisdiction for all disputes arising from this agreement, provided Seller is a merchant, a legal entity or a special fund under public law. Buyer shall also be entitled to commence an action at Seller's legal place of jurisdiction.
3. If the Purchase Order covers goods or services to be exported into or imported from a country other than Germany whose laws, rules or regulations affect the composition or quality of the goods or services, or any other material term hereof, Seller shall so inform Buyer and Buyer may, at its option, attach to the Purchase Order a supplement reasonably addressing such laws, rules or regulations, or may direct Seller to those terms and conditions of sale that govern Buyer's purchases in such other country and, upon such direction by Buyer, such alternate terms and conditions shall then govern the Purchase Order.

## **XV. Ethical Conduct**

Seller's employees shall comply with the BorgWarner Supplier Code of Conduct articulated within the BorgWarner Supplier Manual. Compliance with these standards is a mandatory component of Buyer's purchase contracts worldwide and must also apply to Sellers' subcontractors. Both the BorgWarner Supplier Code of Conduct and the BorgWarner Supplier Manual are incorporated by reference as part of this Purchase Order and are binding on the Seller.

## **XVI. Assignments**

Seller may not assign its rights or delegate its obligations, in whole or in part, under the Purchase Order without Buyer's prior written consent. The sale of a controlling interest in Seller's outstanding voting securities, or a merger or combination involving Seller that changes the voting control of Seller or in which Seller is not the surviving corporation, shall be deemed an assignment of the Purchase Order requiring Buyer's consent.

## **XVII. Quality Control**

Seller shall maintain adequate and consistent quality control inspection and testing to assure that goods will consistently conform to specified requirements, and shall, at Buyer's request, furnish substantiated results of quality control inspections and testing in accordance with the BorgWarner Supplier Manual. Seller shall notify Buyer in writing before changing any way processes used in production or Buyer's specified requirements of goods ordered by Buyer under the purchase order. Buyer's specified requirements used in production must not be changed without Buyer's prior written consent and in accordance with the BorgWarner Supplier Manual.

## **XVIII. Compliance**

In providing goods or services under this Purchase Order, Seller will comply with any and all applicable European, national, local, and foreign laws, regulations and other legal requirements.

a) Seller will comply with, including but not limited to the Federal Occupational Safety and Health Act of 1970, the Federal Hazardous Substances Act, the Transportation Safety Act of 1974, the Hazardous Materials Transportation Act, the Clean Air Act, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act, Sections 6,7, and 12 of the Fair Labor Standards Act, the U.S. Foreign Corrupt Practices Act ("FCPA"), the United Kingdom Anti-Bribery Act of 2010 ("Bribery Act"), and such amendments to such laws and regulations and policies, orders, permits, licenses and governmental approvals promulgated or issued thereunder. Upon request by Buyer, Seller shall certify in writing, from time to time, its compliance with all or any applicable laws, rules, regulations or legal requirements.

Seller guarantees the security of the supply chain and complies with corresponding legal requirements. Upon request of the Buyer, Seller will provide evidence in the form of certificates or confirmations (such as security declaration as Authorized Economic Operator AEO" or compliance declaration according to the Customs-Trade Partnership Against Terrorism Program "C-TPAT").

b) Seller shall comply with all applicable requirements of the European Union's ("EU") REACH legislation, including, without limitation, pre-registering and/or registering any substances supplied to Customer and for which REACH registration is required, and designating an "Only Representative" to act as an importer under REACH for any substances supplied, directly or indirectly, by you for import by a Customer entity into the EU. Seller shall provide Customer with all documents and information Customer may reasonably require to verify Seller's compliance with REACH. Seller shall indemnify and hold Customer harmless from and against any liability, claims, demands or expenses arising from or relating to Seller's noncompliance.

c) The rights to and benefits of any duty drawback, including rights developed by substitution and rights which may be acquired from Seller's Sellers and export credits to the extent transferable to Buyer, are the property of Buyer. Seller will provide all documentation and information and take any necessary steps to obtain refunds or drawback of any duty, taxes or fees paid, and to receive export credits from, the government of the country of origin or export country. Seller will provide Buyer with all documentation and information required by applicable law necessary to determine admissibility, timely release, customs clearance and entry of the goods into the destination country. Seller will advise Buyer if the importation or exportation of the goods requires an import or export license and will assist Buyer in obtaining any such license, but will not be required to incur any costs without reimbursement by Buyer. Seller warrants that the information regarding the import or export of the goods supplied to Buyer is true and correct, and that all sales covered by the Purchase Order will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported.

d) Seller represents that it does not, and shall not, utilize slave, prisoner, child, or any other form of forced or involuntary labor, as defined by applicable law, in connection with the supply of good or services to Buyer under the terms of this Purchase Order.

e) Seller will, and will ensure that its subcontractors will, not act in a manner or take any action that will, or could be reasonably expected to, render Buyer liable for a violation of the FCPA, the Bribery Act, and any other similar act, law, directive, rule or regulation which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity or agency, political party or instrumentality to assist Seller or Buyer in obtaining or retaining business or to gain an unfair business advantage.

f) Seller will, and will ensure that its sub-suppliers and/or other subcontractors will comply with all applicable laws regarding the minimum wage and in the event and to the extent the minimum wage has not been paid and the Buyer is held liable for such wages, Seller will reimburse Buyer and hold Buyer harmless for any and all payments Buyer makes based on its statutory liability.

g) Seller shall use commercially reasonable efforts to ensure that all goods supplied to Buyer and the processes used to make them shall minimize life-cycle environmental impact, including minimizing waste generation, the use of energy and nonrenewable resources, and the emission of greenhouse gases; and shall maximize the use of recycled, recyclable, biodegradable and nontoxic materials.

h) During the term of the Purchase Order, Buyer's Customer (or, ultimately, the original equipment manufacturer) may ask or require Buyer to disclose the country of origin of the raw materials or components of Buyer's product or assembly, including, without limitation, the location of the mines from which the minerals were extracted which were used to form such raw materials. At Buyer's request, Seller shall provide all relevant information and reporting as may be requested (including, without limitation, information related to Seller's Sellers) to enable Buyer to completely and accurately make its disclosures, and will take any other actions reasonably required by Buyer to comply with this Section, including, but not limited to, purchasing or otherwise acquiring access to (and requiring Seller's Sellers to purchase or otherwise acquire access to) any raw material "tracking" software or other products or activities required by Buyer. By way of example (but not by way of limitation), the requirements of this Section would include the disclosure to Buyer of information necessary to enable Buyer's Customer (or, ultimately, the original equipment manufacturer) to comply with the Conflict Minerals disclosure mandate under section 1502 of the U.S. Dodd Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) and regulations promulgated thereunder, potential legislation or regulations enacted by other countries or states pertaining to conflict minerals, as well as for social policies that Buyer, Buyer's Customer or the original equipment manufacturer wish to pursue. If further guidance on compliance with section 1502 is provided by governmental or regulatory sources from and after the date hereof, Seller acknowledges and agrees that this section will be automatically and without any action required by Buyer modified to require compliance with such additional guidance.

## **XIX. General Provisions**

1. In the event any provision of the present Terms and Conditions of Purchase and the further agreements made is or becomes invalid, such invalidity shall not affect the validity of the remaining provisions of the present Terms and Conditions of Purchase. The parties shall be obliged to replace any such invalid provision by a stipulation which most closely achieves the economic purpose of such invalid provision.

2. The laws of the Federal Republic of Germany without its conflict of Laws provisions shall exclusively govern the order and its processing; the applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be ruled out.

3. In the event Supplier suspends payments or insolvency proceedings are requested against Supplier's assets, we shall be entitled to rescind the agreement in whole or in part.