

Federal-Mogul Aftermarket Sales Terms and Conditions Europe, Middle East and Africa (EMEA)

1 GENERAL – SCOPE OF APPLICATION AND DEFINITIONS

1.1 These terms and conditions for Aftermarket (EMEA) sales and deliveries ("FM Sales T&C") shall govern all sale of goods or work- and service performances by the acting Federal Mogul company ("FM") including future transactions and the phase of initiation of a transaction, contract negotiations, quotations submitted by FM to Customer or answers of FM to inquiries. FM Sales T&C apply exclusively. General terms and conditions of Customer conflicting with, being contradictory to or deviating from FM Sales T&C are not acknowledged by FM, unless expressly accepted in writing. This also applies where reference to Customer's terms and conditions has been or was made or where FM did not object to them or, if FM – being aware of conflicting or deviating conditions of Customer – delivers without reservation. FM Sales T&C only apply vis-à-vis entrepreneurs, if the legal relationship belongs to the operation of the entrepreneur, and vis-à-vis enterprises.

1.2 "**Customer**" as used in these FM Sales T&C is each buyer of FM products, work- or service performances (jointly "**Products**") based upon contractual agreement. FM and Customer are jointly "**Parties**" and each individually "**Party**".

1.3 FM is entitled to process for its own purposes also the personal data originating from the business relationship. Customer is herewith informed of and agrees to this for purposes of applicable data protection laws.

2 QUOTATIONS, OFFERS, PURCHASE ORDERS

2.1 Quotations or offers provided by FM are without engagement until FM's final purchase order confirmation.

2.2 In case the quotation of Customer is a binding purchase order, FM is entitled to accept this purchase order within two weeks from receipt by sending a purchase order confirmation or by delivering the ordered Products.

2.3 Each purchase order is only valid for the market for which the Products are destined according to express agreement. FM has to be informed about the target market by Customer in advance. In the event Customer may not deliver into a target country, e.g. because of an embargo, he – upon FM's request – has to return to FM the Products delivered. Any non-compliance herewith obligates Customer to compensate the damage incurred by FM.

2.4 In the event the purchase order is not based on an expressly in writing and signature agreed product – and/ or a material specification, or in the event reference is made to product- and/or material specifications used by FM, the respective work specifications applicable for these Products and materials at FM shall be agreed ("**FM Specifications**") and solely applicable. Upon Customer request information about such specifications is provided. If Customer approves Products deviating from the particulars set out in the purchase order, these are deemed to be owed. Further information, e.g. in brochures, pamphlets, catalogues, etc., are not part of the contract unless expressly agreed upon in writing. These brochures, pamphlets, catalogues etc. do not contain any legally binding declarations and particularly do not constitute assured qualities, independent assurances (guarantees) otherwise or definite action directives. This also applies in case of standard- or conformity designations being used.

2.5 Solely the Customer decides in his own responsibility on the fitness of the Products to be delivered by FM for the purpose chosen by him or fitness of putting the Products into operation. A purpose of use of FM's Products determined by Customer only becomes part of the contract if expressly agreed in writing. In case of resale nobody shall be permitted to make further statements and specifications or undertakings without FM's prior written consent. Article 2.4 shall apply accordingly.

2.6 Customer assures traceability of Products delivered by FM. Customer shall not exercise a right to refuse performance in this regard. At any time FM may request evidence on the keeping of proper documentation.

2.7 Customer has to inform FM in advance, if Products to be delivered by FM are to be used as a safety related part or a part requiring special documentation. He is liable to FM for all damages incurred due to the non-fulfillment of this obligation. The Products may not be used in aviation or in nuclear plants without prior written consent by FM.

2.8 Any illustrations, drawings, calculations and other documents, models or patterns related to the Products made available to Customer remain the sole property of FM. FM reserves all copyrights as well as all ownership rights therein. Any handing over of such documentation to third parties by Customer requires the prior express written consent of FM. The foregoing shall apply accordingly to any documents submitted by Customer to FM whereby FM is authorized to submit those documents to third parties which FM has permissibly sub-contracted in delivery of services or goods for the fulfillment of its contractual obligations towards Customer.

3 PRICES, INVOICES AND PAYMENT CONDITIONS

3.1 Unless otherwise stated in the purchase order confirmation, FM's prices are understood net as *ex works* (EXW INCOTERMS 2000) FM's factory/warehouse. Products will be provided in standard packaging only. Any special packaging required by Customer for transport is not included in the price. As *ex works*, the price does also not include freight, transfer, insurance, customs, assembly and the applicable value added tax. The value added tax applicable on the date of invoicing will be shown in its legal amount separately on the invoice.

3.2 Unless otherwise agreed, FM's claims are due net within 30 days as of date of invoice. No discounts are granted unless so agreed in writing. FM may request payment in advance or collateralization prior to delivery. In the event of default of Customer FM is entitled to a default interest of at least 8% per annum over and above the applicable basic interest rate set by the central bank in the jurisdiction of FM. FM reserves the right to assert further damages.

3.3 Payments are only to be made in the currency determined in the invoice. Bills of exchange and checks will only be accepted subject to conclusion of separate agreement and only on account of payment. Any cost of discounting and charges for collection are to be borne by Customer.

3.4 Customer may only set off counterclaims which either have been expressly acknowledged by FM or are adjudicated by a non-appealable judicial decision. Customer is only entitled to exercise a right of retention insofar as his counterclaim is based on the same legal relationship. Customer is not entitled to a right of partial retention in cases of partial performance. Claims of Customer against FM may only be assigned or pledged with the express written consent of FM.

4 DELIVERY TIME AND DEFAULT IN DELIVERY

4.1 Timely delivery is subject to all documents, necessary authorizations and releases by Customer being provided to FM in due time as well as the abidance by the payment conditions and other obligations of Customer. If these obligations are not complied with, delivery times are prolonged appropriately except in cases, where FM is responsible for the delay.

4.2 Unless otherwise agreed and except for cases where a specific acceptance or assembly obligation has expressly been agreed upon, the delivery time is deemed to be met if readiness of the Products for collection by Customer or his freight carrier at FM's factory has been announced by the expiration of the time period agreed for delivery.

4.3 Upon request of FM, the Customer is obliged to declare within an appropriate time frame, whether he still desires delivery of the Products despite the delay.

4.4 In the event that the collection of the Products by the Customer or his freight carrier is delayed upon request of the Customer for more than 2 (two) weeks after (i) the agreed delivery time or, (ii) in case a fixed delivery time has not been agreed, after having given notice of readiness, FM is allowed to invoice a storage charge amounting to 0.5 % (point five per cent) of the Product price per month, however not more than a total of 5 % (five per cent) unless Customer proves lower damages on part of FM. The right of FM to claim proven damages in excess remains unaffected. After expiration of an appropriate time limit set by FM and due notification to Customer, FM is entitled to dispose of the Products otherwise and eventually deliver Products to Customer within an adequately prolonged time limit.

4.5 At any time FM is entitled to have its delivery obligations fulfilled by an affiliated company or to have the Products manufactured by an affiliated company. Affiliated company shall mean all legal entities, companies with limited liability, corporations and partnerships including limited partnerships which are directly or indirectly (i) controlled by FM, (ii) controlling FM or (iii) being under common control by a company which directly or indirectly controls FM. Control shall mean holding the majority of the shares or voting rights or otherwise being able to direct the affairs of such company.

5 DELIVERY, PASSING OF RISK

5.1 Unless otherwise stipulated in the purchase order confirmation, the delivery term *ex works* (EXW INCOTERMS 2000) at FM's factory is agreed.

5.2 Partial deliveries are permissible to a reasonable extent.

5.3 The risk of loss, including accidental loss, passes with the dispatch of the Products, meaning the handing over of the Products to the Customer or his designated freight carrier, at FM's factory. In case dispatch, if so agreed, is delayed for reasons the Customer is responsible for, the risk of loss passes to the Customer on the date which has been notified to Customer for dispatch but in no case prior to the originally agreed delivery date.

5.4 Unless otherwise expressly agreed, the passing of the risk of loss is not affected even if FM should upon request and on the account of Customer arrange for insurance of the Products.

6 FORCE MAJEURE

6.1 In case of an event of force majeure or other unforeseen, extraordinary circumstances not due to either Party's fault (interruption of business, strike, lockout, interventions by authorities, difficulties in power supply, delayed supply of or supply of defective raw material, semi-finished or finished preliminary products necessary for the production of the Products, etc.) both Parties are released from rendering their obligations under the contract to the extent and for the duration of the impediment plus an appropriate start-up time thereafter. This also applies if such impediments occur at sub-suppliers. Either Party will inform the other Party without undue delay on the commencement and end of such impediments.

6.2 In the event the impediment lasts longer than six months either Party may withdraw from the contract.

6.3 In case delivery or performance becomes impossible or unreasonable for FM due to such impediments, FM is released from the delivery obligation. To the extent FM is released from the delivery obligation advance payments will be returned to Customer. Customer shall not be entitled to damages in case the delivery is delayed or in case FM is released from its obligations due to force majeure.

7 COLLATERAL, RIGHT OF RETENTION, SEIZURE BY THIRD PARTY

7.1 FM reserves all rights of ownership in the Products delivered until the purchase price for the Products has been duly paid. FM further reserves all rights of ownership in the Products until all payments outstanding in the business relationship with Customer have been duly settled. For as long as the title to the Products lies with FM, the Customer is not allowed to pledge, to assign or to transfer the Products as a collateral to a third party.

7.2 In case of a violation of the contract by the Customer, especially in case of delayed payment, FM is, after having granted an adequate time period for cure, entitled to take back and to utilize the Products. In case of successful utilization, the revenues less disbursements will be deducted from the debts of Customer. Retrieval of the Products by FM shall, however, not be construed as withdrawal from or rescission of the contract by FM.

7.3 For as long as the title to the Products lies with FM, Customer is obligated to handle the Products properly and to store them with appropriate care. Customer must clearly mark the Products as being the property of FM. Customer is further obligated to obtain at his own cost proper insurance for the Products at replacement value against damage by fire and water as well as against theft. Claims against the insurer are herewith assigned to FM. FM accepts such assignment. Customer directs insurer to perform payment only directly to FM. Necessary maintenance and inspection work must be carried out by Customer in due time at his own cost.

7.4 In the event of seizures of or other interferences with the Products by third parties Customer has to inform FM in writing without undue delay, so that FM may take appropriate action to protect its property. Customer has to take all measures necessary for annulment and defense of such interventions and claims and to support FM in securing its rights in every manner, also in the name of FM. Customer must reimburse to FM any in court and out of court expenses which FM cannot recover in any such proceeding.

7.5 Customer is entitled to sell the Products within the ordinary course of business and/or to resell them also during the time for which the title to the Products still lies with FM, provided, however, Customer receives complete payment from his business partners at the time of transfer of ownership or sells and transfers the Products to his business partners also only under retention of title. Independent of whether the Products are sold onward by Customer after further processing or not, Customer assigns to FM already now the receivables accruing in such onward sales against his business partners up to the amount invoiced by FM (including value added tax). If the Customer has established a current account agreement with his business partners, the assignment shall extend to the acknowledged balance or in case of insolvency of such business partner to the actual balance. Customer remains authorized to collect these receivables even after assignment. The right of FM to collect these receivables remains unaffected. FM shall not collect these receivables as long as the Customer duly fulfills his payment obligations vis-à-vis FM and has not filed for the opening of bankruptcy proceedings or suspended its payments altogether. Should the Customer fail to fulfill his obligations as described before FM can request from Customer that all assigned claims and debtors are named along with all details necessary for collection, the relevant documents are handed over and that his business partners are informed about the assignment. Customer herewith assigns also all claims under bills of exchange that are given by Customer's business partners for a sale of the property of FM to them. FM may also claim at any time from Customer that the bills of exchange are handed over and endorsed. FM is at any time entitled to notify third parties of the above mentioned assignment. All assignments are herewith accepted by FM.

7.6 Upon request of Customer, FM shall release the securities granted to it in accordance with applicable law in case of over-collateralization. The choice of securities to be released is at the discretion of FM.

7.7 In countries where an "Extended Retention of Title" does legally not exist only the "Retention of Title" applies and parties shall agree on appropriate substitute for the "Extended Retention of title" as the case may be.

8 WARRANTY CLAIMS

8.1 In the event the purchase order is not based on an expressly in writing and signature agreed product – and/ or a material specification, or in the event reference is made to product- and/or material specifications used by FM, the respective work specifications applicable for these Products and materials at FM shall be agreed ("**FM Specifications**") and solely applicable. Upon request FM will provide to Customer information on the FM Specifications. The particulars fixed in the FM Specifications determine exclusively the performance obligation as to the Products. In case Customer approves Products differing from the purchase order stipulations, these are deemed to be owed. It is Customer's sole responsibility to provide to FM accurate and complete purchase order stipulations and the documents related thereto. The FM Specifications or references to norms labeling or conformity labeling do not constitute a guarantee granted by FM. Guarantees will only be granted in express written declarations. Moreover; drawings and technical stipulations or documentation, do not give rise to any guarantee or constitute any assured qualities or can otherwise be a basis for claims against FM unless expressly agreed in writing in advance.

Any potential assurance of customer to third parties as to FM supplied products, not approved by FM is invalid and customer shall be solely liable for such kind of assurances towards third parties and towards FM.

8.2 Customer undertakes to inspect the delivered Products without undue delay and to give to FM notice of a defect in writing by explaining its nature and extent. Apparent defects must be notified within 10 days after delivery, and defects which are despite proper examination not apparently detectable, within 10 days after their detection. In case Customer fails to give notice of a defect within these time limits, Customer shall not be entitled to claims and rights based on these defects.

8.3 Upon claiming a defect, the Customer is first of all obliged to immediately provide to FM the defective Products along with the entire corresponding documentation, any analysis carried out as well as information concerning maintenance, storage, utilization of any machinery, handling and delivery of the Products concerned. Upon request of FM, the Customer allows inspection on his site as to the storage or manufacturing processes used for or applied to the Products or other impacts the Products are exposed to. FM assumes no liability as to defects occurring due to processing or remedy or misuse by the Customer, as well as due to wear and tear.

8.4 If the Products show a defect within the limitation period prescribed by Article 9.6 below for its cause FM at the time of the passing of the risk is responsible, the Customer shall have the right to claim supplementary performance by way of, at FM's sole discretion, either removal of defect or replacement of the Products. In case of removal FM is obliged to reimburse the proven necessary expenses arising from the purpose of removal, especially transport and transportation charges, labor and material costs but only insofar and to the extent these are not increased due to the Products having been transferred to a place different from the place of delivery, unless such transfer is in accordance with the specified use of the Products. FM is entitled to subsequent improvement or replacement delivery also in case of material defects.

8.5 In case supplementary performance fails due to FM's responsibility, the Customer is entitled to charge to FM cost according to the portion corresponding to the defect Products' purchase price. In case the breach of duty on the part of FM is essential, the Customer may withdraw from the contract. Any unilateral deduction from the purchase price is subject to prior agreement with FM in writing

8.6 After coordinating with us, Customer has to grant the necessary time and possibility allowing FM to carry out all subsequent improvement and replacement deliveries deemed necessary by FM in its sole discretion. Otherwise FM is released from the

consequences of damages possibly caused by not having conducted such improvement or replacement delivery.

8.7 Subject to Article 9 below, claims for damages or compensation claims for expenditures are excluded unless expressly provided for in Article 8.1 through 8.6.

9 GENERAL LIABILITY, LIMITATION OF LIABILITY AND LIMITATION PERIODS

9.1 FM is liable for reimbursement of claimed and proven expenses – to the extent it is proven to be caused by a failure of FM – under applicable law, if the claim is based on intent or gross negligence by FM, its representatives or its vicarious agents. In case of a grossly negligent violation of the contract, however, liability shall be limited to foreseeable and typical damages.

9.2 FM is liable under applicable law for culpable breaches of essential contractual obligations. In these cases, however, liability shall be limited to foreseeable and typical damages.

9.3 Liability for culpable injury of life, body or health remains unaffected. The same shall apply to mandatory liability under applicable product liability laws.

9.4 Any claims of Customer for damage or compensation for expenditures going beyond those laid out in these FM Sales T&C – irrelevant for which reason, especially for the breach of an obligation under the contract or out of tort – are excluded. This shall not apply in case of damages to health, bodily injury or bodily injury followed by death as well as in cases of intentional or grossly negligent breach of duty caused by FM, its representatives or its vicarious agents.

9.5 All obligations of FM to reimburse or indemnify Customer hereunder must be expressly accepted by FM in accordance with the terms hereof. Debit notes, invoices, set-off or similar statements by Customer without such prior acceptance are hereby rejected. FM shall not be obliged to an individual rejection of such declarations by Customer.

9.6 All claims of Customer under these FM Sales T&C for damages or compensation become time barred after one year from delivery of the Products to Customer in all other cases. This shall not apply if and to the extent mandatory law provides for longer time periods.

9.7 As far as the liability of FM is excluded or limited this applies as well to the liability of the employees, staff members, representatives and vicarious agents of FM.

9.8 Customer undertakes to maintain sufficient insurance coverage for liability cases, especially fault and no fault insurance. Customer has to inform his insurer of his obligations hereunder.

9.9 Customer shall comply with all applicable laws and regulations of the country(ies) of destination and shall ensure the retraceability of the Products during the sales process to its customers.

10 CONFIDENTIALITY

Customer agrees to treat confidential all knowledge and information from the business relationship with FM which is not in the public domain. Customer agrees to impose these obligations as his own upon third parties involved by him. Customer is liable to FM for all damages arising from the violation of this obligation. A continued violation of this obligation shall not be considered a continuous offence especially where such continuous offence could give rise to arguments against causation of continuing damages by Customer. The confidentiality obligation hereunder constitutes an independent legal duty also after the termination of the business relationship with FM.

11 WAIVER, MODIFICATION

No waiver of any right under any of the provision in these FM Sales T&C will constitute a waiver of any other right hereunder. These FM Sales T&C may only be modified in writing signed by authorized representatives of FM and Customer.

12 FM ETHICS STATEMENT

FM's agents and employees are prohibited from soliciting or accepting kickbacks, bribes and inappropriate gifts and entertainment. Customer is required to avoid any action to induce FM's agents and employees to accept any improper consideration, whether legal or illegal. Customer warrants that no such consideration has been offered or provided. FM reserves the right, and by placing purchase order, Customer hereby agrees to permit FM, to audit any of Customer's relevant records that are deemed necessary by FM to ensure compliance with this Ethics Statement. An expanded version of FM's Ethics Statement is available under www.federalmogul.com/en/Suppliers/Purchasing-Policies/EthicsStatement/.

13 APPLICABLE LAW, VENUE

13.1 The legal relationship between the Parties will be governed exclusively by the local laws applicable at the principle place of business of the respective FM legal entity confirming Customer's purchase order, without recourse to the rules on conflict of laws or international agreements such as the Convention on Contracts for the International Sale of Goods (CISG).

13.2 If the Customer is an entrepreneur or company, FM's principal place of business (registered office) shall be the place of proper fulfillment and place of venue; however, FM is entitled to institute legal proceedings against the Customer in any courts having jurisdiction over him.

14 SEVERABILITY

Should any provision of these FM Sales T&C be or become invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected thereby. If any provision is invalid, FM and the Customer shall agree on a valid provision that comes as close as possible to the original provision in legal and economic terms.