

## ArvinMeritor Commercial Vehicles Aftermarket Europe Terms and Conditions of Sale

### § 1 Application

§ 1.1 These terms and conditions of sale ("Terms") shall be the exclusive terms and conditions applicable to the sale of ArvinMeritor Products. Differing or contrary terms shall not apply, unless expressly agreed in writing.

§ 1.2 These Terms shall also govern all future transactions between the parties and shall also apply if ArvinMeritor ("Seller") performs delivery despite the submission, by the Purchaser, of differing or contrary terms.

### § 2 Offer, Acceptance

Any quotation shall stay in force for 30 (thirty) days.

### § 3 Selling

§ 3.1 Selling is defined in the Seller's European Price List (EPL) and are based on existing labour and material costs. Prices are subject to revision if labour and material costs increase prior to Seller's confirmation of the order.

§ 3.2 Prices are ex works, exclusive of the respective statutory VAT.

§ 3.3 Prices include shipment packaging. Any additional services with respect to packaging, including but not limited to documents and marking shall be borne by the Purchaser.

§ 3.4 The selling price is due and payable within the payment terms stated on the invoice. In the case of invoice payment delay, a late payment interest charge amounting to 1% per month may be added to the invoice price. The interest will be calculated beginning on the invoice due date. Seller is not required to inform the customer in advance of any late payment interest charges. Seller reserves all rights to claim further damages for invoice payment delays.

§ 3.5 There is a minimum order value for stock orders, as well as a handling fee for Vehicle Off Road order, i.e. urgent repair status, to be communicated separately to these Terms.

### § 4 Offset, Retainer

§ 4.1 Purchaser shall be entitled to offset only insofar as Purchaser's counterclaim is acknowledged, undisputed or confirmed in a legally binding judgement.

§ 4.2 Purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

### § 5 Retention of Title

§ 5.1 Seller retains title to the products until receipt of all payments in full. In case of breach of contract by the Purchaser including, without limitation, default in payment, Seller is entitled to take possession of the products.

§ 5.2 Purchaser shall handle the products with due care, maintain suitable insurance for the products and, to the extent necessary, service and maintain the products.

§ 5.3 As long as the purchase price has not been completely paid, Purchaser shall immediately inform Seller in writing if the products become subject to rights of third persons or other encumbrances.

§ 5.4 Purchaser may resell products subject to the above retention of title only in the course of his regular business. For this case, Purchaser hereby assigns all rights to proceeds arising out of such resale, whether the products have been processed or not, to Seller. Notwithstanding Seller's right to claim direct payment Purchaser shall be entitled to receive the payment on the assigned claims. To this end, Seller agrees not to demand payment on the assigned claims to the extent Purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

§ 5.5 Insofar as the above securities exceed the secured claim by more than 10%, Seller is obligated, upon its election, to release such excess securities upon Purchaser's request.

### § 6 Delivery

§ 6.1 Unless otherwise mentioned in the quotation, time stated for delivery is estimated as accurately as possible but is not guaranteed.

§ 6.2 If partial or consecutive deliveries are agreed Purchaser will accept delivery in accordance with agreed time schedule. Seller may invoice each shipment separately.

§ 6.3 Delivery is conditioned upon timely and proper performance of all duties of Purchaser. Defences based on non-performance of the contract are reserved.

§ 6.4 Any Claims relating to obvious defects are subject to Purchaser's due compliance to examine all products upon

receipt and to report such obvious defects in the "Proof of Delivery/Collection Note".

§ 6.5 In case of default in acceptance or other breach of duties to cooperate by Purchaser Seller is entitled to claim any resulting damage, including but not limited to additional expenses. The right to seek further damages is reserved. In this case, the risk of loss or damage to the products passes to Purchaser at the time of such default or breach of duty to cooperate.

## § 7 Supply Discrepancies

§ 7.1 Any quantity discrepancy (shortage, overage) between the number of products stated in the delivery documents and the number of products delivered, as well as any mispick must be reported to Seller with the respective Supply Discrepancy Form within ten days after receipt of the products

§ 7.2 Any complaints regarding lack/failure of shipping documents and missing or damaged packaging can only be accepted by Seller if recorded in the "Proof of Delivery/Collection Note".

## § 8 Passing of Risk

The risk of loss or damage to the products passes to Purchaser upon transfer of title of the product as per the agreed upon delivery conditions (Incoterms).

## § 9 Cancellation of Orders

§ 9.1 Seller may cancel confirmed orders if Seller shall for any reason be in doubt as to the financial condition of Purchaser, or Purchaser refuses to collect or accept delivery of reserved goods.

§ 9.2 Orders in process may not be cancelled or changed except with Seller's written consent and upon agreement by the parties as to appropriate cancellation charges or adjustment of the purchase price.

§ 9.3 Seller may refuse to cancel a confirmed order if (i) the product has been manufactured or purchased explicitly for the respective order; (ii) the product is already allocated to the respective order or is in the process of being packed and shipped; (iii) special promotion terms have been applied to the respective order and/or a credit note has been generated; (iv) partially canceling order where original order quantity qualified for special price on quantity.

## § 10 Warranty

§ 10.1 Seller warrants all products against defective material or workmanship. Such warranty is restricted to products used on vehicles the specifications of which have been approved in writing by Seller.

§ 10.2 Seller makes no warranty as per merchantability or, except as stated above, as to fitness of products for a particular use. The warranty does not cover normal wear and tear; nor does it cover a component that fails, malfunctions or is damaged as a result of (i) improper installation, adjustment, repair or modification (including use of unauthorized attachments or changes or modification in the vehicle's configuration, usage or vocation from that which was originally approved by the Supplier) (ii) accident, natural disaster, abuse, or improper use (including loading beyond the specified maximum vehicle weight or altering engine power settings to exceed the transmission, axle, driveline and/or clutch torque capacity), or (iii) improper or insufficient maintenance (including deviation from approved lubricants, change intervals, or lube levels). This warranty does not cover any component or part that is not sold by Seller.

§ 10.3 This warranty is expressly extended in lieu of all other warranties or conditions, expressed, implied or statutory including any implied warranty of merchantability or fitness for a particular purpose

§ 10.4 If Purchaser fails to comply with the examination and notification obligation as stated above, the products shall be deemed accepted by Purchaser, and later claims shall be rejected, unless such claim is based on a defect that was not discernible at the time of examination. If a defect was indiscernible at the time of examination, but becomes apparent later, Purchaser shall notify Seller without undue delay, otherwise the products will be deemed to have been accepted.

§ 10.5 The acceptance of any warranty claim is further conditional upon Purchaser submitting the "ArvinMeritor Warranty Claim Form", as well as providing all additional information requested by Seller, such as, but not limited to photographs.

§ 10.6 Seller will, at its discretion, if it finds the product to be defective on examination, repair or replace defective products, free of charge. The transport charges are at Seller expense and are limited to those incurred for the most economic shipping and reshipping mode. In the event Seller fails to properly repair or replace the defective products within a reasonable period of time, Purchaser shall be entitled to cancel the purchase order and the value of the defective product, as indicated in respective invoice, shall be credited by Seller to Purchaser.

§ 10.7 Warranty claims shall be excluded if Purchaser does not notify Seller in writing of any defects upon detection or notification by end-user.

§ 10.8 The warranty period shall be 12 (twelve) months from the date of commissioning or 18 (eighteen) months from the date of delivery whichever comes first. The term

of the warranty will not be extended by the repair or replacement of any product effected during the same period.

§ 10.9 If it is necessary to return any Product under this warranty, Purchaser agrees not to make any deductions on account thereof from due payments while such warranty claims are pending.

§ 10.10 If warranty claim has been accepted, reimbursement will be credited exclusively for the respective product, at the price invoiced when sold to Purchaser. Seller will not compensate any additional expenses, such as consequential damages, reassembling costs or any other follow-up or related costs.

## § 11 Return Shipments

Return shipments are exclusively coordinated by Seller. The return number assigned by Seller must be stated clearly in the shipping documents. Non authorized return shipments cannot be identified by Seller and will be returned to Purchaser at Purchaser's expense, or scrapped in case Purchaser cannot be identified.

## § 12 Liability

§ 12.1 In no event shall Seller's total liability exceed 75% of annual turnover or a maximum of Euro 500.000 (five hundred thousand Euros) per event, a series of connected events being considered a single event.

§ 12.2 Any liability for indirect loss, including consequential loss, loss of profits, lost savings and loss caused by interruption of operations is expressly excluded.

§ 12.3 Seller makes no representation or warranty that the use, sale, or re-sale of Products, either alone or in combination with other parts, will not infringe the patents or other industrial property rights of third parties. Purchaser hereby agrees to indemnify and hold Seller harmless for any and against any claim or litigation alleging such infringement or violation of other industrial property rights.

§ 12.4 Seller's statutory liability for culpable damage to life, body or health as well as its liability under the Product Liability Act shall remain unaffected.

§ 12.5 Any liability not expressly provided for above shall be disclaimed.

## § 13 Force Majeure

Seller shall not be liable for delay or failure in performance due to fire, floods, strikes, or other differences with workmen, accidents, labour or material or transportation shortages, including strikes, war (declared or undeclared), riot, governmental orders or regulations, legal interferences or prohibitions, defaults on the part of

suppliers, or other causes beyond Seller's reasonable control.

## § 14 Confidentiality

Any specifications, drawings, technical information or other data furnished by Seller to Purchaser and marked "Confidential" shall remain Seller's property, shall be kept confidential by Purchaser, and shall be returned to Seller at its request.

## § 15 Electronic Data Interchange

§ 15.1 Seller and Purchaser may use electronic data transmission systems to issue quotations, purchase orders, purchase order acknowledgements, or other correspondence or information.

§ 15.2 These Terms shall supersede any terms and conditions contained in any such electronic transmission.

## § 16 Applicable law, Jurisdiction

§ 16.1 These Terms as well as the entire legal relationship between Seller and Purchaser shall be governed exclusively by and construed in accordance with the laws of Germany (excluding the Convention on Contracts for the International Sale of Goods).

§ 16.2 Every dispute arising from or in connection with these Terms or any quotation or order that could not be amicably settled between Seller and Purchaser within a period of two months following its occurrence shall be finally settled under the rules of arbitration of the International Chamber of Commerce (ICC). The arbitration shall take place in Frankfurt, Germany and shall be held in the English language.