

# Tooling Conditions

Version: 2015

## I. Application

- 1) The following conditions shall govern the manufacture, the use and the maintenance as well as the acquisition and transfer of title of tooling including follow-up tooling used by the supplier (hereinafter referred to as "Supplier") of Pierburg s.r.o. (hereinafter referred to as "PG") for the production of PG-related parts (hereinafter referred to as "Tooling").
- 2) These conditions shall also apply if the Supplier (manufacturer of parts) purchases the Tooling from third parties (sub-suppliers).
- 3) Opposing terms of the Supplier or terms that deviate from these conditions shall not apply unless expressly agreed by PG in writing.
- 4) These conditions shall also apply if PG effects payment for or accepts delivery from the Supplier without reservation in full knowledge of opposing terms of the Supplier or terms that deviate from these conditions.
- 5) These conditions shall form part of all orders by PG and all contracts between the Supplier and PG. They shall also apply to follow-up orders without PG again having to refer to these terms.

## II. Manufacture of Tooling, Construction of Tooling

- 1) The Supplier shall be obliged to carry out the construction, quality and performance of the Tooling strictly adhering to the agreed technical specifications, functions, activity values and drawing requirements of the parts to be produced.
- 2) Unless otherwise agreed in writing, the Supplier shall present to PG, at intervals of two weeks a progress control of the Tooling as target-performance comparison and if requested, in the agreed time, a drawing of the Tooling.
- 3) If, after the Tooling has been ordered, PG requests changes that lead to price changes or delays, the Supplier shall, prior to the start of any activity related to the changes, submit to PG a written quotation containing the updated timeline and price schedule. If additional costs or time delays are not confirmed by PG in writing, they shall remain out of consideration.
- 4) At completion of the Tooling the Supplier shall maintain an inventory of all Tooling. The inventory shall contain all Tooling used for the production of parts for PG. The inventory shall contain for each Tooling the part number of the produced part / the part that shall be produced. The Supplier shall submit the inventory of the Tooling to PG upon PG's request.
- 5) Commissioning of a subcontractor by the Supplier shall require the prior written consent of PG.
- 6) Any manufacturing materials provided by PG shall remain the property of PG and shall be marked as such.
- 7) Any manufacturing materials provided by PG as well as the Tooling itself may not be modified, disposed of, transferred by way of security, pledged or forwarded in any other way without the express written consent of PG. In the event of pledge, confiscation or other dispositions or interventions by third parties, the Supplier shall immediately notify PG.

## III. Delay

- 1) The dates and time schedules stated in the order are of the essence and binding; this shall apply as well to agreed milestones during the production time of the Tooling.
- 2) The Supplier shall be obliged to inform PG immediately in writing where circumstances arise or come to its attention which indicate that compliance with the agreed manufacturing date of the Tooling may not be possible. Silence to such notification shall not be deemed to imply acceptance of a new manufacturing date.
- 3) In the event of delay, the Supplier shall be liable for all and any direct and indirect damages, including coincidental damages, resulting therefrom according to applicable laws. Further statutory claims shall remain unaffected by this provision. In particular, PG shall remain entitled to withdraw from the respective contract.

## IV. Payment, Title, Withdrawal

- 1) PG will only pay for the first Tooling, unless otherwise agreed in writing.
- 2) Payment of the Tooling
  - a. Unless otherwise agreed in writing, the Supplier shall be entitled to invoice the Tooling to PG after the following conditions are fulfilled:
    - PG has received the Supplier's order confirmation.
    - The Tooling is completed.
    - The PPAP-release for the part to be produced has been approved.
    - The Tooling costs have been detailed.
    - According to PG's requirements, the Tooling shall be permanently marked as „property of PG“ (or of a third party, if requested by PG).
    - A detailed photo documentation that shows the Tooling in different views and the marking has been submitted.

After correct invoicing, the payment of the first Tooling shall be effected „immediately net“. Payment of the Tooling shall not constitute acceptance of its contractual conformity by PG.

- a. If agreed, the costs of the first Tooling may be allocated on a defined quantity of serial parts and therefore be paid via the serial price (so called "Tooling cost amortisation"). In this case, the agreed Tooling costs and

the defined quantity of serial parts shall be separately reported in the purchase agreement.

- c. Furthermore, PG shall be entitled to pay for a partly finished Tooling during its manufacture. In this case the agreed Tooling costs shall be reduced by taking into account the value of the manufacturing steps not reached and the expenses and efforts saved by the Supplier in this regard.

### 3) Transfer of title

- a. The title of the Tooling that are applied and invoiced by the Supplier shall be transferred to PG after complete payment. The Tooling shall not be assigned, sold, leased or in any other way pledged for the benefit of a third party by the Supplier without PG's prior written consent. The Supplier shall inform and, to the extent necessary, assist PG immediately if a third party claims any rights in respect to the Tooling or if the Tooling is, for example, subject of compulsory execution.
- b. In case of Tooling cost amortisation (cf. IV. 2) b.), the Supplier shall grant to PG the right to prematurely pay the complete Tooling price at any time. The title of the Tooling shall pass to PG once it is completely paid.
- c. The title of any follow-up Tooling shall pass to PG upon its completion.
- d. The Supplier shall mark the Tooling as „property of PG“ (or of a third party, if requested by PG) and shall submit photos of the marking.

### 4) Acceptance and transfer of Tooling

- a. Any time after complete payment of the Tooling PG shall be entitled to take possession of a single or all Tooling, the Tooling construction details in an editable format, the Tooling history documentation and all available spare parts for the Tooling. The Supplier shall have no right of retention in this regard.
- b. Until the legal transfer of the Tooling to PG, the Supplier shall be liable, without limitation, for any breakdown, complete or partial destruction as well as for any other damages of the Tooling, including coincidental damages.

## V. Use of Tooling

- 1) The Supplier shall guarantee that the Tooling and documentations are free from third parties' rights, including but not limited to intellectual property rights. If third party rights exist, the Supplier shall indemnify PG from all and any claims relating thereto and/or shall ensure that PG is granted free of charge a non-exclusive, worldwide, assignable and unlimited license for the use of the Tooling and the thereto-related documentation for the production of parts.
- 2) The Tooling shall be used exclusively for the production of parts for PG. The Tooling may be used for other purposes only after express, prior and written consent of PG.
- 3) The Supplier shall guarantee that the Tooling is fit for use for the production of the agreed volume of parts in the agreed quality. The Supplier shall carry out maintenance, Tooling repairs and, if necessary, the manufacture of the follow-up Tooling at its own cost.
- 4) The Supplier shall be responsible that the follow-up Tooling is suitable and available for use as required.
- 5) Follow-up Tooling respectively Tooling repairs shall be presented to PG and the relevant new initial samples need to be approved in writing by PG.
- 6) The Supplier shall, free of charge, maintain complete and consistent inventory of all Tooling used in production of parts for PG. This shall include (but is not limited to) the documentation of changes, maintenance, repairs, renewals and the volume of the produced parts.
- 7) The Supplier shall, free of charge, maintain possession of the Tooling, store and protect them duly, handle them in accordance with usual care and insure them for PG's benefit against fire, water, theft, damage and other comparable circumstances. The insurance shall not release the Supplier from its own liability, neither on its legal grounds, nor concerning its extent.
- 8) The Supplier shall, free of charge, keep and store Tooling and all documentations for a period of fifteen (15) years following the end of serial production.
- 9) The Supplier shall be liable for a safe and riskless application of the Tooling; it is responsible for the compliance with all statutory provisions, notably – but not limited to – the corresponding accident prevention of the competent Employer's Liability Insurance Association or comparable institutions.

## VI. General Provisions

- 1) These conditions are governed by the laws of the Czech Republic excluding its laws of conflict.

Application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CSIG – "Vienna Sales Convention") is excluded.
- 2) Exclusive place of jurisdiction for all disputes and claims resulting from or in connection with these conditions shall be Ústí nad Labem, Czech Republic.
- 3) Rights and obligations of the Supplier under these conditions or arising from any contract with PG may not be assigned or transferred without the consent of PG.
- 4) If any provision of these conditions is or becomes invalid, this shall have no effect on the validity of the remaining provisions. Further, the Supplier and PG shall, if possible, replace the invalid provision with a new, valid provision that fulfils as closely as possible the intent of the invalid provision. The same shall apply to unintentional regulatory gaps.