

**GENERAL PURCHASING CONDITIONS EMERGE, a.s.**  
**(rev. 5. 6.2020)**

## **1. USE**

The purpose of these Terms and Conditions is the definition of rights and obligations concerning the deliveries of raw materials, materials, components, machines and their parts, services and other ordered items (thereinafter just "the Goods") provided by the Supplier or supplied through its chosen carrier for the Buyer, i.e. : EMERGE, a.s. with its registered office at Tyršova 1075, 294 01 Bakov nad Jizerou, Czech Republic and all their operations.

All rights and obligations resulting from all current and future Purchase Orders placed by EMERGE, a.s. are governed by these Terms and Conditions. These Terms and Conditions have an exclusive scope and they are superior to any Supplier's documents whether these are his General Business or Trading Terms and Conditions or other documents.

By accepting a Purchase Order placed by EMERGE, a.s. the Supplier confirms his acceptance of these Terms and Conditions even if the Terms and Conditions were not signed by the Supplier. If the Supplier does not accept these Terms and Conditions he is obliged to inform EMERGE, a.s. of this fact in writing. In that case EMERGE, a.s. has the right to cancel the Purchase Order in writing without any obligation to reimburse the Supplier for any expenses incurred in connection with the cancelation.

## **2. DEFINITIONS**

2.1 In the Purchase Contract/ Order/ Open Order, the following definitions shall have the meaning set out below.

**"Company EMERGE, a.s."** or **"Emerge"** means EMERGE, and is headquarter Tyršova 1075, 294 01 Bakov nad Jizerou, Czech Republic, ID: 287 64 226, registered in the Commercial Register maintained by the Municipal Court in Prague, under number B 21729, including all their branches.

**" Delivery address "** shall mean correspondingly characterized plant (establishment) Company Emerge or named place of delivery specified in the Order.

**"Change and/or discontinuation"** means changes, in particular, in the composition, formulation, production process, production location, including any other physical or chemical changes relating to the Parts that are supplied to Emerge, or due to various reasons the Supplier decides to cancel or discontinue production of the Part.

**"Defective Part"** means any Part or Parts not meeting the requirements set out in Sections 11 of these General Purchasing Conditions.

**"Delivery Plan"** is a document, whether in electronic form or on paper, that set out the quantities and delivery dates and other delivery information for Parts that EMERGE, a.s. expects to request delivery of within a certain period of time.

**"Field Actions"** means any activity EMERGE, a.s. initiates on Products in order to address quality or safety issues, compliance with legal requirements or customer/end-user concerns. Field Actions include but is not limited to product recalls and service campaigns.

**"Intellectual Property Rights"** means trademarks, trade dress, patents, copyrights, know-how, trade secrets and industrial design rights.

**"Order"** means Purchase Order , Framework Order or Tooling order.

**"Parts"** means any parts, systems, components, products, raw materials, goods or services that EMERGE, a.s. orders and the Supplier supplies to EMERGE, a.s.

**" Contracting Party "** or **" Contracting Parties "** shall mean the contracting party of the Purchase Contract .

**"Product"** means the product in which a Part is, or is intended to be, incorporated.

**"Purchase Contract"** is an agreement between EMERGE, a.s. and the Supplier for the purchase by EMERGE, a.s. of Parts or Tooling from the Supplier as defined in an Order confirmed by the Supplier

**"Purchase order / Framework order"** is a document in paper or electronic form, issued by Emerge, a.s. to the Supplier for the purchase of Parts.

**"Supplier"** means the party to a Purchase Contract that supplies or is intended to supply goods to EMERGE, a.s..

**"Supplier portal Emerge"** means the internet home page <http://www.emerge.cz> and any subsequent replacement of the same.

**"Technical specification"** means documentation provided or referred to by EMERGE, a.s. which describes the Part's or Tooling's shape, function, material content and/or any other requirement on the Part or Tooling.

**"Tooling Purchase Order"** is a document issued by EMERGE, a.s. to the Supplier for the purchase of Tooling.

**"Tooling"** means any and all tools, jigs, fixtures, dies, moulds, models and/or other equipment, including related software, specifically manufactured or adapted for manufacture or quality control of Parts.

**"EMERGE Procedures"** means any procedures or instructions issued by EMERGE, a.s. or published on or under the EMERGE's Portal.

2.2 Terms defined in these General Purchasing Conditions shall have the same meaning in all documents being part of the Purchase Contract, unless the context expressly provides otherwise.

### **3. CONCLUSION OF A PURCHASE CONTRACT AND CONTRACTUAL DOCUMENTS**

3.1 A Purchase Contract can be concluded by confirmation of Order as well. In such case Purchase Contract is concluded between EMERGE, a.s. and the Supplier when EMERGE, a.s. has issued an Order to the Supplier, and this Order was accepted by the Supplier.

3.2 EMERGE, a.s. accepts no liability for Parts (including components or raw material for the manufacture of those Parts), that have not been ordered, in writing, by EMERGE, a.s., and in accordance with this Section 3.

3.3 An Order incorporates these General Purchasing Conditions.

3.4 A Purchase Contract includes these General Purchasing Conditions and may include the following documents:

Purchase Order, Tooling Purchase Order, Technical Specifications, Price agreement, Warranty Charter, and Delivery Plan according to Section 7.1 and other agreed documents. With respect to such documents, a subsequently issued document shall prevail over a previously issued one.

3.5 In the event of a conflict between these General Purchasing conditions and Purchase Contract, the provisions of Purchase Contract shall prevail, unless otherwise expressly agreed in a specific document.

3.6 No terms or conditions submitted by the Supplier shall apply unless accepted in writing by EMERGE, a.s.

3.7. Payments made or acceptance of supplies by EMERGE, a.s. is not an acknowledgment of any other conditions than these General Purchasing conditions and Purchase Contract.

### **4. NON-EXCLUSIVE SUPPLY**

4.1 The Supplier is not the exclusive supplier of the Parts.

### **5. INFORMATION**

5.1 The Supplier shall on a regular basis provide EMERGE, a.s. with such information that may be of importance for EMERGE, a.s. in order to evaluate the relationship with the Supplier and/or such information that EMERGE, a.s. reasonably may request, included but not limited to any information about the Parts and/or the Supplier that may be needed to provide authorities with for the import or export of the Parts.

5.2 If the Supplier enters into insolvency proceedings, is declared bankrupt, goes into liquidation or for any other reason can be assumed to have become insolvent, the Supplier shall immediately inform EMERGE, a.s. thereof.

## **6. CONFORMITY WITH ORDER**

6.1 The Supplier shall supply Parts in accordance with the Technical Specifications and terms of the Purchase Order or Purchase Contract.

6.2 EMERGE, a.s. reserves the right to modify the Technical Specifications of a Part. Any change in price or other conditions resulting from this shall be agreed upon in writing prior to the commencement of delivery by the Supplier.

6.3 The Supplier shall supply Tooling ordered by EMERGE, a.s. in accordance with the terms of the Tooling Purchase Order and/or Purchase Contract. If EMERGE, a.s. has issued Technical Specifications for the Tooling, the Supplier shall supply the Tooling strictly in accordance with such Technical Specifications.

6.4 EMERGE, a.s. reserves the right to modify the Technical Specifications of Tooling, and the Supplier shall immediately modify the Tooling according to the new Technical Specifications. Any change in price or other conditions resulting from the change in Technical Specifications shall be agreed upon in writing prior to performing any change on the Tooling.

## **7. ORDERED QUANTITY AND CAPACITY, DELIVERIES AND COMPENSATION FOR CANCELLED PURCHASES**

7.1 EMERGE, a.s. may issue Delivery Plan(s) for the Parts. The Delivery Plans set out the quantities and delivery dates for Parts that EMERGE, a.s. expects to request delivery of within a certain period of time. Firm requests for delivery of Parts, including the fixing of the exact quantity and delivery time, is made either as part of the Delivery Plan or in the Order. Only what EMERGE, a.s. explicitly has stated, in writing issued to the Supplier prior to the delivery in question, to be a firm request for delivery shall be deemed to be a firm request for delivery.

7.2 Any quantity included in the Delivery Plan that exceeds what is a firm request for delivery of Parts shall be considered a forecast only and shall not be binding on EMERGE, a.s.. However, the Supplier is obliged to maintain such production and delivery capacity so that deliveries can be made in accordance with the forecast quantity in the Delivery Plan.

7.4 The Supplier shall immediately inform EMERGE a.s. if there is a risk of noncompliance with the most recent Delivery Plan issued by EMERGE, a.s.. Recognizing that time is of the essence, the Supplier will take all necessary actions, both ordinary and extraordinary, to ensure timely deliveries.

7.5 In the event of a late delivery of a Part, EMERGE, a.s. is entitled to (i) completely or partly terminate the purchase of the Part and of other Parts which EMERGE, a.s. does not consider

having any use of due to the late delivery, and (ii) make substitute purchases from other suppliers. The Supplier shall indemnify EMERGE, a.s. against, and hold EMERGE, a.s. harmless from, any costs, losses and damages incurred or arising out of or relating to the late delivery.

7.6 The Supplier agrees to a penalty for undue delay of delivery, such penalty shall relate to the total delivery unless alternative delivery dates and/or quantities are agreed in writing by EMERGE, a.s. prior to the due delivery date. The penalty amount shall be 1% of the total contract price for each calendar week of delay, however, as a whole shall not exceed 25% of the total contract price. Payment of the contractual penalty does not relieve the Supplier from the obligation to compensate for all damages arising from the undue delay of delivery and to provide the agreed delivery.

7.7 EMERGE, a.s. reserves the right to cancel any undelivered part of the supply of Parts by the Supplier or to request change of the supply and the delivery, including the packaging, testing requirements, shipping date, or time or place of delivery until 30 days prior to the date of delivery.

7.8 The Supplier shall within ten (10) days of receipt of a change request notify EMERGE, a.s. in writing if such change will affect cost or timing and provide substantiation thereof. Upon request of a change from EMERGE, a.s., the Supplier and EMERGE, a.s. will negotiate in good faith an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustments.

7.9. Should EMERGE, a.s. cancel, wholly or partly, or fail to purchase a quantity of a Part for which EMERGE's Order is firm in accordance with Section 7.1, EMERGE, a.s. shall compensate the Supplier for reasonable costs relating to such cancelled quantity. In calculating such costs, the Supplier shall not receive compensation to the extent that the Part -or components, semi-manufactured items or raw materials intended for it -can be used for other deliveries to EMERGE, a.s. or another party, or for another purpose. EMERGE's obligation to compensate for cancellations is conditional upon the Supplier submitting specified claims for compensation in writing not later than six (6) weeks after the Supplier should have been able to establish the costs relating to the cancelled quantity, but not later than within three (3) months as of the day of cancellation of the Order.

7.10 In all cases unless otherwise agreed in writing, all goods for delivery shall be at the risk of the Supplier until delivered to EMERGE, a.s.

## **8. PRICE AND PAYMENT**

8.1 The purchase price for individual Parts is specified in the Purchase Contract and / or Order and / or Framework order.

8.2 Unless otherwise agreed in writing, invoices shall be payable within net 30 days from the latter of delivery of Parts and the receipt of an undisputed and properly raised invoice. An interest on late payment shall be up to a maximum of 0,01 % for every day of delay.

8.3 The price for Parts stated in the Purchase Contract shall, subject to Sections 8.4 below, apply until the Parties agree on a new price in writing. Unless otherwise agreed in writing, the price stated for any Part (i) is a fixed price and no unilateral price changes are permitted, (ii) is exclusive of VAT but inclusive of all duties, levies, fees and taxes in the country of origin of the Parts (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Supplier.

8.4 The Supplier shall during the term of the Purchase Contract provide EMERGE, a.s. with Parts that are competitive in terms of price, quality, delivery and technical function. If EMERGE, a.s. considers that the Supplier's delivery of one or more Parts is no longer competitive in relation to price, quality, delivery and/or technical function, EMERGE, a.s. shall supply the Supplier with information supporting its belief. The Supplier and EMERGE, a.s. shall in good faith discuss how to make the Part competitive.

8.5 The Supplier undertakes to supply a complete cost breakdown (including but not limited to labour, material and amortization) and the price of all the basic components of any Part.

8.6 All invoices should be properly addressed and sent whether electronic to the e-mail address [faktury@emerge.cz](mailto:faktury@emerge.cz), not intended for the attention of any particular physical persons, and must include all additional information, which are required from the side of Emerge and stated by law, but at least the relevant Purchase Order/Purchase Contract number, the period to which the invoice relates, the identification of the Supplier and EMERGE, a.s., the purchase price, date of issue, the identification of the purchased goods, the invoice number and the Supplier's bank account for payment.

8.7 The Supplier and EMERGE, a.s. will jointly pursue cost reduction opportunities for the duration of the Purchase Contract and will reflect the achievements of such opportunities in price reductions to EMERGE, a.s.

8.8 Without prejudice to EMERGE's other rights and remedies, EMERGE, a.s. may set-off any payments due to the Supplier to the amount of any bona fide contra accounts or other claims which EMERGE, a.s. may have against the Supplier. The Supplier is not entitled to set-off any of its claims against EMERGE, a.s., unless otherwise agreed in writing.

8.9 EMERGE, a.s. will not accept blanket price increases from a Supplier unless otherwise agreed in writing.

8.10 The price for the Parts is the same for all entities within the EMERGE, a.s.

## **9. DELIVERY AND PASSING OF TITLE**

9.1 The delivery terms shall be in accordance with INCOTERMS 2010. Unless otherwise agreed in writing, the delivery clause shall be DDP EMERGE, a.s. respective factory or named point specified in the Order.

9.2 The Supplier shall pack the Parts in accordance with instructions provided by EMERGE, a.s.

9.3 Unless otherwise set out in the Purchase Order or Purchase Contract, title in the Parts will pass to EMERGE, a.s. upon delivery to the delivery location which shall be the ramp of the goods receiving respective area in EMERGE, a.s.. The delivery note shall be considered a necessary document for take-over or delivery of the goods and must include the following data: The Supplier's and EMERGE's trade names and addresses, EMERGE's order No., date of shipment; delivery note No., number of quantity units, quantity/unit, type and number of packages, stamp and signature of the Supplier, licence number of the carrier's vehicle.

## **10. WARRANTIES FOR QUALITY OF PARTS, SUITABILITY FOR INTENDED USE**

10.1 The Supplier warrants, for a period of two years (unless a longer period is agreed or stipulated by law) from the date the Parts are delivered to the end-user, that: all Parts delivered under the Purchase Contract shall conform to the Technical Specifications and to any samples approved by EMERGE, a.s.; and they shall be (i) new; (ii) free and clear of any and all liens and encumbrances; they shall (iii) conform with all specifications, drawings, samples and other descriptions furnished by EMERGE, a.s. or offered by Supplier; (iv) be free from all defects in design (to the extent designed by EMERGE, a.s.), workmanship and materials; (v) be of merchantable quality; (vi) be fit and sufficient for the purposes intended by EMERGE, a.s. – to the extent known by Supplier; (vii) conform to all applicable laws in the country of production and delivery, and shall (viii) not infringe patents or other intellectual property rights of third parties. For deliveries of Parts to EMERGE, a.s., to be used in Products sold in the United States of America, the abovementioned warranty period shall be three years from the date the Parts are delivered to the end-user, unless otherwise agreed in writing by EMERGE, a.s.

10.2 The Supplier shall immediately inform the relevant goods receiver and the responsible purchasing department at EMERGE, a.s. of any Defective Parts, discovered or anticipated which have been dispatched to EMERGE, a.s.

10.3 The Supplier shall ensure it has obtained all information on the intended use of, application of and other conditions affecting the Parts. EMERGE, a.s. shall upon request from the Supplier provide all information, which EMERGE in its sole discretion deems relevant for the design, development and/or manufacturing of the Parts.

10.4 EMERGE's personnel may from time to time render assistance and/or give suggestions and/or opinions to, or affect an exchange of, information with the Supplier's personnel concerning the Parts to be furnished under an Order ("Assistance"). EMERGE, a.s. is not obliged to provide such Assistance and the provision by EMERGE, a.s. of such Assistance shall not create any liability for EMERGE, a.s. and shall not in any way limit the Supplier's liability to fully perform its obligations under the Purchase Contract. Moreover, any Assistance provided by EMERGE, a.s. shall neither grant the Supplier authority to change the relevant Parts or any provisions of an Order or the Purchase Contract, nor shall any Assistance constitute a change binding upon EMERGE, a.s. unless issued as an amendment in accordance with the Purchase Contract. In all cases, and as acknowledged by the Supplier, EMERGE, a.s. is relying upon the

Supplier's knowledge and expertise in performing all work regarding the Parts to be furnished under the Purchase Contract.

10.5 The Supplier shall be aware that all parts supplied to the Automotive Industry must comply with the applicable quality standards (ISO, QS, IATF, VDA, IMDS) and agrees that a quality systems audit may be carried out at any time, with at least five (5) day notice, by EMERGE, a.s. and/or a customer of EMERGE,a.s.

10.6 Unless otherwise agreed in writing, the Supplier undertakes to supply Parts for the specified period for spare parts deliveries, i.e. 10 years, EMERGE, a.s. shall notify the Supplier in writing of the date of ending the series production.

## **11. LIABILITY FOR DEFECTS OR OTHER NONCONFORMING DELIVERIES**

11.1 In the event a Part does not fulfill the requirements set out in Section 10 (a Defective Part), then EMERGE, a.s. shall be entitled to (i) demand immediate rectification, or (ii) demand immediate delivery of substitute Part(s).

11.2 If any Defective Part or Parts which contribute to any risk of production disturbances at EMERGE, a.s. and/or the customer of EMERGE, a.s. or delivery disturbances from EMERGE, a.s. cannot be repaired or replaced by the Supplier immediately, EMERGE, a.s. and/or the customer of EMERGE, a.s. shall be entitled, without obtaining the Supplier's consent and at the latter's expense, to make the necessary repair work including but not limited to: Field Actions, labour, replacement, assembly and disassembly, detection and analyze, or completely or partly terminate the purchase of the Part and other such Parts that EMERGE, a.s. does not consider having any use due to the defect or shortcoming, and also, to undertake substitute purchases from other supplier(s).

11.3 In addition to what is set forth in Sections 11.1 and 11.2 above, the Supplier shall compensate EMERGE, a.s. for any loss or damage arising out of or relating to the Defective Part including but not limited to costs (including reasonable attorney's and expert's fees) for any Field Actions, labour, replacement, assembly and disassembly, detection and analyze, scrapping and transportation to EMERGE, a.s. and/or its customers.

11.4 If due to a delivery of a Defective Part EMERGE, a.s. considers it necessary to inspect all Parts of the same kind delivered by the Supplier, EMERGE, a.s. shall be entitled, after giving the Supplier notice thereof, to make such inspection at the latter's expense and without the latter's approval if the Supplier does not respond to the notice given within 48 hours (two (2) working days). The notice shall describe the nature of the defect as well as the time and place of the inspection. If possible, the Supplier shall be present at the inspection.

11.5 In the event that a delivery does not contain the quantity specified in the Order, EMERGE, a.s. shall be entitled to demand immediate rectification and the Supplier shall compensate EMERGE, a.s. for all costs arising out of or relating to the delay or shortfall in delivery. If the Supplier delivers a quantity either in excess of 5% of EMERGE's ordered quantity or earlier than the delivery date, without prior consent in writing from EMERGE, a.s., EMERGE, a.s. shall



not be responsible for taking delivery of, storing or maintaining such Parts and shall further be entitled to return any excess or prematurely delivered quantity to the Supplier at the latter's expense and/or receive compensation from the Supplier for storage costs, taking into account that even negative quantity deviation exceeding 5% of the delivery or absence of the required documents (certificates etc.) are considered to be the serious defect of the delivery.

11.6 If EMERGE, a.s. accepts Parts that do not conform to the terms of the Purchase Contract this will not relieve the Supplier of its obligations to correct any such non conformance or preclude EMERGE, a.s. from any remedy under the Purchase Contract.

11.7 If a Part does not fulfill the requirements set out in Sections 10.1 and 8.4 and the Parties are unable to arrive at a mutually acceptable solution within thirty days after EMERGE's notification, then EMERGE, a.s. shall have the right to terminate the Purchase Contract to the degree that it concerns the Part.

## **12. WARRANTIES FOR TYPEBOUND TOOLING ORDERED BY EMERGE, a.s.**

12.1 The Supplier warrants that: all Tooling purchased and/or delivered shall conform to the Technical Specifications approved by EMERGE, a.s. and they shall be (i) new; (ii) free and clear of any and all liens and encumbrances; they shall (iii) conform with all specifications, drawings, samples and other descriptions furnished by EMERGE, a.s. or offered by Supplier; (iv) be free from all defects in design (to the extent designed by EMERGE, a.s.), workmanship and materials; (v) be of merchantable quality; (vi) be fit and sufficient for the purposes intended by EMERGE, a.s. – to the extent known by Supplier; (vii) conform to all applicable laws in the country of production and delivery, and shall (viii) not infringe patents or other intellectual property rights of third parties.

12.2 The Supplier also undertakes to maintain all Tooling necessary for production or testing of the goods supplied to the Automotive Industry in perfect condition for the whole period of serial production and in accordance with section 10.6.

## **13. SUPPLIER'S PRODUCTION**

13.1 The Supplier shall in respect of design, development, production, installation and service comply with the applicable requirements of a quality system approved by EMERGE, a.s..

13.2 The Supplier shall always strive to improve the production process. EMERGE, a.s. shall be entitled, after reasonable notification, to inspect the Supplier's production of a Part or Parts, perform tests and make other necessary examinations at the Supplier's premises, including evaluating any risks for interruption in the supply of Parts as well as safety related issues. The Supplier shall endeavour to obtain the same rights for EMERGE, a.s. at the premises of its suppliers.

## **14. TESTING**

14.1 The Supplier shall, prior to commencement of serial production of a new or changed Part, manufacture and perform quality control of samples in accordance with EMERGE's applicable requirements.

14.2 Once a sample has been approved, alteration of the function, appearance, characteristics, material, production method, place of manufacture, Tooling or other equipment which may affect the Part and/or repairs to Tooling or other equipment which may affect any characteristic of the Part may be done only after written approval on each occasion from the responsible department at EMERGE, a.s.. Delivery may thereafter be made only after renewed approval of a sample.

14.3 If EMERGE, a.s. rejects a sample, the Supplier shall make rectification so that the requirements referred to in Section 10.1 are fulfilled and reimburse EMERGE's costs for verification testing of the Part after such rectification.

14.4 EMERGE's approval of samples shall not affect the Supplier's liability and obligations in accordance with the Purchase Contract.

## **15. RELOCATION OF PRODUCTION AND LIMITATION OF ASSIGNMENT**

15.1 The Supplier has been selected by EMERGE, a.s. based on, among other things, EMERGE's expectations on the Supplier's ability to manufacture and deliver Parts with required quality and otherwise in accordance with the Purchase Contract. Therefore, the Supplier may not relocate the production of a Part, wholly or partly, without EMERGE's written consent. Such consent, if given, is without prejudice to EMERGE's continued rights to require compliance by the Supplier with the Purchase Contract. If, as a result of such approved relocation of the production of a Part, the Purchase Contract will be fulfilled by another entity than the Supplier, the Supplier shall ensure that such other entity accepts (prior to or simultaneous to said relocation, naming EMERGE, a.s. as a third-party beneficiary in writing) to be bound, in relation to EMERGE, a.s., by all terms and conditions in the Purchase Contract; the Supplier shall however also continue to be responsible for the fulfillment of the Purchase Contract.

15.2 The Supplier may not assign, transfer or subcontract out any of its obligations towards EMERGE, a.s. to any third party, including without limitation the obligation to procure and supply the Parts, without prior written consent of EMERGE, a.s.

## **16. CHANGE AND/OR DISCONTINUATION**

16.1 The Supplier shall inform EMERGE, a.s., in writing, of the Change and/or discontinuation, for the period of at least 2 years in advance of the effective date of the planned Change and/or discontinuation.

16.2 The Supplier also undertakes that EMERGE, a.s. shall be given the opportunity to purchase a minimum quantity of Parts of the Supplier equating to a total of one year of normal supply of the Parts of the Supplier to EMERGE, a.s.

16.3 If the Supplier fails to inform EMERGE,a.s., in writing, of the Change and/or discontinuation in the period of at least 2 years in advance of the effective date of the planned Change and/or discontinuation, the Supplier shall reimburse or indemnify EMERGE, a.s. for any and all cost of expenses that EMERGE, a.s. shall reimburse or indemnify its customer/s as a result of a failure to inform its customer/s of such Change and/or discontinuation.

## **17. TOOLING OWNED BY EMERGE, a.s. OR THE CUSTOMER OF EMERGE, a.s.**

17.1 Tooling referred to in a Tooling Purchase Order issued by EMERGE, a.s. is owned by EMERGE, a.s. or the customer of EMERGE, a.s.. No payment(s) will be made for Tooling until such Tooling has been approved by EMERGE, a.s. and/or the customer of EMERGE, a.s., unless otherwise agreed in writing by EMERGE, a.s. and/or the customer of EMERGE, a.s.

17.2 The Supplier shall supply (prior to approval) EMERGE, a.s. with (but not limited to) a general assembly drawing of Tooling owned by EMERGE, a.s. or the customer of EMERGE, a.s.

17.3 The Supplier shall mark Tooling owned by EMERGE, a.s. or the customer of EMERGE, a.s. in such a way that ownership is clearly shown and shall inform insurers as to the fact of ownership. The Supplier shall establish a register, accessible to EMERGE, a.s. or the customer of EMERGE, a.s. of all Tooling and, upon EMERGE's request, certify ownership of the Tooling to third parties and/or EMERGE, a.s..

17.4 The Supplier may not use Tooling owned by EMERGE, a.s. or the customer of EMERGE, a.s. for the production and/or supply of any goods or services to any other party.

17.5 The Supplier is solely responsible for and at the Suppliers cost:

- Maintaining the Tooling, including its repair or replacement, in the condition necessary to produce the Parts and be responsible for all wear and tear;
- Housing the Tooling and insure them against loss or damage, even if it occurs despite the Supplier's exercise of due care;
- Keeping the Tooling identifiable as EMERGE's or the customer of EMERGE's property.

17.6 Tooling may not be destroyed or scrapped without EMERGE's or the customer of EMERGE's written consent. Tooling that is the subject of Intellectual Property Right(s) may furthermore not be copied without the consent of the owner of such Intellectual Property Right(s). Upon EMERGE's request, all Tooling, drawings and other materials shall be returned to EMERGE, a.s. or the customer of EMERGE, a.s..

## **18. SPECIALIZED TOOLS OWNED BY THE SUPPLIER**

18.1 The Supplier shall bear the cost of developing, manufacturing, maintaining and renewing all Typebound Tooling used in the production of Parts ordered by EMERGE, a.s.

18.2 If EMERGE, a.s. has any Intellectual Property Rights in Tooling, the Supplier may not use such Tooling for the production and/or supply of any goods or services to any other party.

18.3 If the Supplier enters into insolvency proceedings, is declared bankrupt, goes into liquidation or for any other reason can be assumed to have become insolvent, the Supplier shall immediately inform EMERGE, a.s. thereof. The Supplier undertakes to assist EMERGE, a.s. in acquiring the Tooling which is necessary to manufacture the Parts. If the Tooling is covered by Intellectual Property Rights owned by EMERGE's, the Supplier shall immediately inform the trustee, receiver or other accredited person(s) of EMERGE's Intellectual Property Rights to Tooling. The Supplier shall return to EMERGE, a.s. all document transmitted regarding the development, the manufacturing and maintenance of the Tooling and the Parts (e.g.: drawings, technical documents).

18.4 In case of termination of the Purchase Contract for a Part, EMERGE, a.s. is entitled to acquire the ownership of all Tooling, used solely for production to EMERGE, a.s. and/or EMERGE, a.s. Subsidiaries of such Part, against payment of market value. The Supplier hereby certifies that the Supplier at all times will be able to fulfill its obligations in this respect.

## **19. INTELLECTUAL PROPERTY RIGHTS**

19.1 The Supplier may only use the Intellectual Property Rights of EMERGE, a.s., whether such Intellectual Property Rights are in Parts or in Tooling, for the production and supply of Parts to EMERGE, a.s. and may not use such Intellectual Property Rights for the production and/or supply of any goods or services to any other party.

19.2 If EMERGE, a.s. pays, or otherwise compensates the Supplier for development or design work initiated by EMERGE, a.s. for Parts or Tooling, any Intellectual Property Rights arising from such work shall accrue to EMERGE, a.s. in the scope allowed by law, and, all drawings for Parts or Tooling relating to the compensation shall become the property of EMERGE, a.s.

19.3 EMERGE, a.s. and the Supplier may in a separate document agree on the ownership to and remuneration for Intellectual Property Rights resulting from design and/or development work performed by the Supplier.

19.4 The Supplier warrants that the Part or its use does not infringe the Intellectual Property Rights of any third party. The Supplier will indemnify and hold EMERGE, a.s. harmless against all claims for that may be brought against EMERGE, a.s. arising of Intellectual Property Rights of the third party.

19.5 The Supplier shall not use any corporate name or trademarks belonging to or licensed to EMERGE a.s. other than as instructed by EMERGE, a.s. in writing.

## **20. PRODUCT LIABILITY AND INSURANCE**

20.1 The Supplier shall defend, indemnify and hold EMERGE, a.s. harmless from and against any and all loss, liability, damages (direct, indirect, consequential, punitive or otherwise), costs and expenses (including reasonable attorney's and expert's fees) arising from or relating to any: (i) defect or non-conformity of the Parts; (ii) non-compliance by Supplier with any of its representations, warranties or obligations under the Purchase Contract; (iii) negligence or fault of the Supplier in connection with the design or manufacture of the Parts including defects in material and/or manufacturing processes or techniques; (iv) any environmental damage, spill, discharge or emission of hazardous wastes or substances caused by a defect or contractual nonconformity of the Parts; or (v) infringement (including contributory infringement or inducement to infringe) of any Intellectual Property Right relating to the Parts provided by the Supplier. This agreement of indemnification includes the Supplier's responsibility for all judgments or settlement amounts which may otherwise be or become the responsibility of EMERGE, a.s.

20.2 This agreement of indemnification shall inure to the benefit of EMERGE, a.s., its officers, directors, successors and assigns. The Supplier shall, at EMERGE's request, assist EMERGE, a.s. in disputes in which EMERGE, a.s. could become involved by reason of such alleged defects and if required by EMERGE, a.s. take on the conduct of any dispute.

20.3 Neither EMERGE, a.s. nor the Supplier will file cross-claims or third party complaints against the other in product liability litigation without notifying the other Party in advance. Where practicable, notice should be given sufficiently in advance to allow thorough discussion of alternatives to such filing.

20.4 If there is a risk of a Product causing personal injury or property damage due to a Part being a Defective Part such that EMERGE, a.s. decides to perform a Field Action, the Supplier shall compensate EMERGE, a.s. for its costs in conjunction with such Field Action, including but not limited to costs (including reasonable attorney's and expert's fees) for labour, replacement, assembly and disassembly, detection and analyze, scrapping and transportation to EMERGE, a.s. and/or its customers/end-users.

20.5 The Supplier shall enter into and maintain an adequate product liability insurance policy and general liability insurance policy during the period of the Purchase Contract and shall at EMERGE's request also supply EMERGE, a.s. with a copy of the insurance certificate.

## **21. FORCE MAJEURE**

21.1 "Force Majeure" shall mean all events which are beyond the control of the Parties, and which are unforeseen, unavoidable or insurmountable, and which were not known at the acceptance of an Order and which prevent total or partial performance by either Party. Such events shall include for example earthquakes, typhoons, flood, war, epidemics, civil disturbances, and any other event which cannot be foreseen, prevented or controlled. For the avoidance of doubt, strikes, lock-outs or other industrial action or disputes solely related to

the Supplier and/or its subcontractors or agents shall not be deemed as events of Force Majeure.

21.2 If an event of Force Majeure occurs, a Party's contractual obligations affected by such an event shall be suspended during the period of delay caused by the Force Majeure and the period for performing such obligations shall be extended, without penalty, for a period equal to such suspension.

21.3 The Party claiming Force Majeure shall promptly inform the other Parties in writing and shall furnish within ten (10) days thereafter evidence of the occurrence and expected duration of such Force Majeure.

21.4 In the event of Force Majeure, the Parties shall immediately consult with each other in order to find an equitable solution and shall use all reasonable endeavours to minimize the consequences of such Force Majeure. If the consequences of the Force Majeure event continue for a period of thirty (30) days EMERGE, a.s. or Supplier shall be entitled to immediately terminate the relevant Purchase Contract.

## **22. LEGAL REQUIREMENTS, CODE OF CONDUCT, ENVIRONMENTAL CONCERN**

22.1 Each Party shall comply with all applicable Czech laws and regulations relevant to the performance unless otherwise defined in the Purchase Contract. This will include but not be limited to the Supplier's obligation to treat dangerous goods in accordance with all applicable laws and regulations.

22.2 The Supplier shall comply with the obligations established under the EU Chemicals REACH Regulation and warrants so to EMERGE, a.s.

22.3 A declaration of conformity with all prevailing legal requirements, and if applicable, a hazard analysis, must accompany all Supplies. Acceptance of Supplies delivered shall not constitute acceptance of nonconforming Supplies, nor will it limit or affect any rights or remedies of EMERGE, a.s.

22.5 The Supplier further undertakes to comply with EMERGE's Environmental Requirements.

## **23. EXPORT CONTROLS AND ORIGIN**

23.1 If any Part, or component therein, which the Supplier delivers to EMERGE, a.s. is subject to national export or control regulations in those countries where the Supplier produces the Part or those countries from which the components originate, the Supplier shall be obliged, prior to the Parties agreeing on the Technical Specification, to notify EMERGE, a.s. in writing thereof and of the scope of the export restrictions.

23.2 The Supplier shall be obliged to deliver all assistance, information or certificates needed by EMERGE, a.s. for custom clearance for any Part or component therein, which the Supplier

delivers to EMERGE, a.s..

23.3 The Supplier shall upon delivery supply EMERGE, a.s. with an export certificate or its equivalent containing among other things details of the origin of a Part delivered and -in relevant instances -its EC-or EEA-value.

23.4 The original, EC-or EEA-value of a Part may not be altered without the prior written consent of EMERGE, a.s.

## **24. CONFIDENTIALITY**

24.1 All information, equipment, know-how and technical documentation, including electronically stored data and computerized geometries, to which a Party has obtained access through the Parties business relationship, shall for the duration of the Purchase Contract and for ten (10) years thereafter be treated as confidential and may not be used for any purpose other than for the deliveries to EMERGE, a.s. The information may not be shown to or in any other way communicated to or used by others than such personnel of either of the Parties that are directly involved in the implementation of the deliveries to EMERGE, a.s.. Copying or reproduction of such confidential information is permitted only within the framework of the fulfillment of a Party's obligations and with regard to the applicable copyright laws and regulations. However, the confidentiality undertaking outlined above shall not apply to information which is (i) known to the public other than by breach of Purchase Contract, (ii) information which a Party can show was in its possession before receiving it from the other Party, and (iii) information which a Party receive from a third party without restraints as to the disclosure thereof.

24.2 Information which a Party is required to disclose by reason of law or order of a court of a competent jurisdiction may however be disclosed for such purpose. The Party requested to disclose such information shall beforehand notify the other Party of any such requirement and consult with the other Party regarding the manner of such disclosure. The Party disclosing information pursuant to this Section shall, as far as is legally possible, require the receiver of the information to treat it confidential as required in Section 24.1.

24.3 The Supplier may not make public the business relationship of the Parties through advertising or in any other way without prior written consent from EMERGE, a.s.

24.4 The Supplier shall at EMERGE's request either return or destroy everything referred to in Section 24.1 including copies thereof.

## **25. WAIVER**

25.1 No waiver by either Party of any breach of the Purchase Contract shall be considered a waiver of any subsequent breach of the same or any other provision.

## **26. SEVERABILITY**

26.1 In the event that any provision of the Purchase Contract should become invalid due to e.g. legislation, only the said provision shall be considered invalid while the remaining provisions shall remain in force. The Parties shall in such a case immediately conclude a new agreement that replaces the invalid provision and as far as is possible ensures through its content an equivalent result.

## **27. TERM OF THE PURCHASE CONTRACT**

27.1 Unless otherwise agreed the Purchase Contract shall be valid for an indefinite period of time.

27.2 Unless otherwise agreed in writing, the Purchase Contract may be terminated by either Party by written notice with six (6) month notice period, this notice period will begin as of the first day of the next month after the delivery of termination notice to the second Party.

27.3 The Purchase Contract can also be terminated in accordance with Sections 11.7 with a termination period of 90 (ninety) days. In case of breach of any and all provision from Section 24, EMERGE, a.s. can terminate Purchase Contract with immediate effect.

27.4 In addition to the above, a Party is entitled to terminate the Purchase Contract with immediate effect and without any liability for compensation due to such termination if: the other Party enters into insolvency proceedings, is declared bankrupt, goes into or the other Party is acquired by a competitor of the Party seeking termination.

27.5 Without limitation of the survivability of any provisions hereunder which by their nature would reasonably be construed as surviving any expiration or termination of any Purchase Contract, the provisions of Sections 10, 11, 12, 19, 20 and 24 will survive the expiration or termination of Purchase Contract

## **28. LANGUAGE**

28.1 These General Terms and Conditions of Purchase are issued in Czech and English versions. In the event of any discrepancy between the Czech and English version hereof, the Czech version shall prevail.

## **29. GOVERNING LAW AND DISPUTES**

9.1 Unless otherwise agreed the Purchase Contract and these General Purchasing Conditions are subject to the laws of the country of EMERGE's domicile. The UN Convention on Contract for International Sale of Goods (CISG) shall not apply to the Purchase Contract.



29.2 Any dispute or controversy arising out of or in connection with Purchase Contract and/or these General Purchasing Conditions shall if not settled amicably by the Parties be submitted to the jurisdiction of the courts of the country of EMERGE's domicile.