



*quality non woven and tufted carpet products*

## **General Purchasing Terms and Conditions (version 2008)**

**01.01.2009**

These general purchasing terms and conditions shall apply to all purchases made by Mistra-Autex AS (the Buyer), unless otherwise separately agreed in writing between the Buyer and its supplier (the "Supplier", and together with the Buyer, the "Parties"), and shall constitute an integral part of the Agreement as defined below. The Supplier accepts the following general terms and conditions and expressly represent that it has received and understood them.

### **1. Definitions**

- 1.1 Agreement:** shall mean the Order (or in the absence of an Order, any communication specifying the Products to be purchased by the Buyer) and these General Conditions, the Delivery Schedule and the Technical Specifications, constitute the entire agreement between Buyer and Supplier with respect to matters contained herein and supersedes all prior oral or written representations and agreements.
- 1.2 Delivery Schedule:** shall mean any agreed schedule for delivery of the Products agreed in writing between the Parties.
- 1.3 General Conditions:** shall mean these general purchasing terms and conditions.
- 1.4 ISO TS16949:** shall mean that the Supplier implements the quality system ISO TS16949 or at least ISO9001.
- 1.5 Order:** shall mean the Buyer's purchase order for Products.
- 1.6 Product:** shall mean the product/s service/s that the Supplier shall supply to the Buyer pursuant to the Agreement.
- 1.7 Technical Specification:** shall mean the documentation agreed upon by the Parties, which describe the Product's shape, function, material content etc and unless otherwise agreed between the Parties, the specification of requirements issued by the Buyer shall apply as a Technical Specification.

### **2. Orders and final agreement**

- 2.1** All Orders shall be in writing and shall be subject to these General Conditions. Any change or amendment to an Order by the Supplier requires the prior written consent of the Buyer. These General Conditions shall prevail over any general terms and conditions of sale, or similar documents of the Supplier, which are hereby expressly rejected in their entirety.
- 2.2** The Buyer shall be entitled to unilaterally make amendments of the design and model of the Product in case such amendments are required by the customer of the Buyer (including, inter alia, the

automotive manufacturer for whom the Product is ultimately destined). The amendments communicated by the Buyer shall apply immediately, but the Parties shall use their best efforts to adapt the original Agreement within the shortest delay possible.

- 2.3** The Buyer shall be entitled to cancel an Order for Products prior to delivery. The Buyer shall, as exclusive remedy, to a reasonable extent reimburse Supplier for direct costs with respect to materials used and work performed up to the date of the notice of cancellation, to the extent related to the cancelled Products and to the extent the Products or material cannot be used of other deliveries by the Supplier.

### **3. Communication**

- 3.1** Each Party shall continuously inform the other Party on all matters that are of importance to the Parties performance under the Agreement and shall also in all such communications express themselves with such clarity and with such means as are required in order to ensure a correct performance in all respects.

### **4. Delivery and acceptance**

- 4.1** The agreed delivery clause shall be construed in accordance with the "INCOTERMS 2000". Unless otherwise agreed, the delivery clause shall be "DDU Buyer's premises" as are decided and set out in the Agreement.
- 4.2** The Product shall be delivered within the time specified in the Buyer's Order or in the Delivery Schedule.
- 4.3** Delivery shall be deemed to have taken place when the Product has been received at the agreed place of delivery. The delivery shall include all Order data, as well as all other documentation agreed on and specified in the Order. Unless stated in the Order or otherwise agreed, the documentation shall be in English.
- 4.4** The Supplier shall take all available measures to be able to make its delivery on time. The Supplier shall immediately inform the Buyer if

there is a risk that delivery will be delayed including, without limitation, the reasons for and an assessment of the duration of such anticipated delay. The Supplier expressly acknowledges and accepts that the Buyer will incur considerable financial damage, such as penalties for late delivery, by the Buyer's customer and that the correct deliveries of the Products are of significant important.

**4.5** Receipt payment or use of a Product shall not imply a renouncement of any rights whatsoever, and shall in particular not constitute acceptance of the Product of the amounts invoiced.

**4.6** A Supplier must accept return of over shipments. Over shipments are not accepted, unless previously agreed by Parties, and overages will be returned to a Supplier with all costs associated with the return being a Supplier's responsibility.

## **5. Prices and conditions of payment**

**5.1** The prices for the Products shall be as set out in the Buyer's Order unless otherwise agreed in writing. The prices shall be stated excluding valued added tax, but shall include packaging and transport.

**5.2** Payment shall be made within the terms of payment (calculated from receipt of the invoice by the addressee stated on the Order, however not earlier than the day of delivery), and shall also be made in accordance with the other conditions that the Parties have agreed upon in writing. The terms of Payment shall, in the absence of any other agreement, be 60 days. An invoice shall be deemed to be rejected without notice, if it does not comply with all of the following requirements: the invoice is correctly issued, according to the applicable legislation, and addressed, marked for the attention of the correct individual, and includes all other information required by the Buyer. Payment shall be considered to have been effected by the Buyer when sent.

**5.3** Remittance of payment does not imply any acceptance of the delivery or the invoice amount.

## **6. Documentation and support**

**6.1** The Supplier undertakes to provide the Buyer with the support necessary as regards the application of processes and advance quality planning that relates to the Product. The Supplier shall continuously accept and act on the Buyer's directives to be given from time to time pursuant hereto.

**6.2** The Supplier undertakes to keep complete records of all parts of the Product that are specified in the Technical Specification or referred to in technical data and/or in the Agreement. The records shall contain information of when, in what manner and by whom the inspection of conformity has been performed before delivery of the Products including evidence that the Product and all parts have conformed with the features set out in the Technical Specification and otherwise. The Supplier

undertakes to keep these records for 1 (one) year from the time when the Product is no longer in use by the Buyer or from the Agreement whichever of these events which arises last and to submit copies to the Buyer upon the Buyer's request.

## **7. Packing, replaced and returned materials**

**7.1** All replaced and returned materials including, without limitation packaging ("Materials"), not owned by the Buyer, shall remain or become the Supplier's property, unless otherwise agreed.

**7.2** The Supplier shall remove or destroy the Materials at its own risk and expense.

**7.3** If so requested by Supplier, the Buyer shall remove or destroy the Materials at the Supplier's risk and expense.

**7.4** The Buyer shall at all times have a right to return the Materials to the Supplier at the Supplier's risk and expense.

## **8. Warranty (defects and supply)**

**8.1** The Supplier warrants that the Products supplied are free from any defects. A Product shall be considered defective if, without limitation, it:

- In any respect deviates from the Technical Specification;
- Does not possess the characteristics that the Supplier has referred to through samples, prototypes or in marketing;
- Is not as safe as the Buyer could reasonably have expected.
- Is not fit for the particular purpose for which the Buyer intended it to be used in accordance with the Technical Specifications; or
- Otherwise deviates from what the Buyer reasonably could have expected

**8.2** Any claim relating to a defect must be made within 6 months from the later of:

- The date on which the defective Product has been delivered to a final customer by the Buyer; or
- The date on which the defective Product has been brought into use on the Buyer's own behalf; or
- The date on which the defect was discovered by the Buyer or its final customer

## **9. Supplier's production**

**9.1** The supplier is obliged to immediately inform the Buyer of any defective Products, discovered or anticipated which have been dispatched to the Buyer.

9.2 Supplier warrants that it follows international regulations on child labor, penal servitude and similar.

## **10. Liability for defects, shortcomings and delayed deliveries**

10.1 In the event that a Product is defective in accordance with Clause 8 above, or a delivery does not contain the agreed quantity, the Buyer shall be entitled to:

- Demand immediate rectification; or
- Demand immediate delivery of substitute or missing Products; or
- Demand adequate reduction in purchase price; or
- Withdraw from the Agreement

10.2 If a defective Product cannot be rectified or replaced within one day as from notification of the existence of a defective Product or if there is a risk of delivery disturbances from Supplier, the Buyer shall be entitled, through prior written notification delivered to the Supplier by the Buyer but without obtaining the Supplier's consent, to completely or partly terminate the purchase of the Products and other such Product that the Buyer does not consider having any use of due to the defect or shortcoming, and also to make covering purchases from other suppliers at the Supplier's expense.

10.3 In addition to what is set forth in Clause 10.1 and 10.2 above, the Supplier shall compensate the Buyer's losses and damages, direct as well as indirect, arising out of or relating to the defect or the shortcoming of delivery.

10.4 In the event of late delivery of a Product, the Buyer shall be entitled to damages from the agreed delivery date. The damages shall be payable at a rate of 1% of the purchase price for each price for each commenced week of delay up to a maximum amount as equals 15% of the said purchase price. Any damages shall be due and shall be paid by the Supplier to the Buyer at the Buyer's first written demand, provided that it need not be paid until the relevant delayed Products are finally delivered or the damages in respect of such Products has reached the maximum amount, whichever is the first to occur. For the avoidance of doubt, the Supplier's payment of the damages as abovementioned shall not relieve the Supplier from its obligation to deliver the relevant delayed Products.

10.5 In addition to what is mentioned in Clause 10.4 above, the Buyer shall be entitled to:

- Completely or partly terminate the purchase of the Product which the Buyer does not consider having any use of due to late delivery; and
- Make covering purchases from other suppliers at the expense of the Supplier

10.6 Notwithstanding Clause 10.4 above, the Supplier shall always be liable to compensate the Buyer's direct and indirect losses and damages arising out of or relates to the late delivery. For the avoidance of doubt, Supplier acknowledges that Buyer will enter into agreements with external parties, amongst other automotive manufactures, and that Supplier's fulfilment of all its obligations set out in the Agreement (including these General Conditions) are decisive for Buyer's liability towards such external parties

## **11. Inspection**

11.1 The Buyer and/or its customer shall at all times be entitled to inspect (or direct an inspection of) the Products before, during or after the date delivery, The Buyer has the right to specify verification arrangements and the method of products release in the purchasing documents.

11.2 At the Buyer's first request, the Supplier shall grant the Buyer or its customer access to the place where the Products are produced, processed or stored. The Supplier shall closely cooperate with the Buyer in performing the inspection, without charging any additional costs.

11.3 If inspection cannot be made at the intended time or if an inspection must be repeated, the costs incurred by the Buyer shall be paid by the Supplier. Unless otherwise agreed if any Products are rejected the Supplier shall ensure that the Products are repaired or replaced in a first possibility after notification, unless the Buyer prefers dissolution of the Agreement in conformity with Clause 20 of these General Conditions.

11.4 If the Supplier fails to meet the obligation to repair or replace the Products as specified in Clause 11.3, the Buyer shall be entitled to purchase the requires goods from a third party or take all necessary measures, or commission a third party to take such measures, at the Supplier's risk and expense.

11.5 Verification by the Buyer and/or its customer shall not absolve the Supplier of the responsibility to provide acceptable product, nor shall it preclude subsequent rejection by the customer.

## **12. Product Liability**

12.1 The Supplier shall compensate the Buyer and its affiliates for all direct and indirect losses and damages arising out of or relating to a Product having caused personal injury or property damages due to the fact that the Product was defective. When a claim is presented on account of such a loss damage, the Buyer shall notify the Supplier as soon as reasonably possible, and

the Parties shall jointly undertake the investigation that are called for in order to defend such claims in the best possible way. If requested by the Buyer, the Supplier shall also assist Buyer in the event of any dispute.

**12.2** If there is a risk of a Product causing personal injury or property damage due to being defective, and the Buyer for this reason decides to recall a Product, the Supplier shall compensate the Buyer and its affiliates for all their costs in conjunction with such recall.

### **13. Other sanction**

**13.1** In addition to the Supplier's liability for defects, delays and product liability under the Agreement, a party shall compensate the other party for any losses or damages suffered as result of a breach of the Agreement

**13.2** If a party in any essential respect fails to comply with obligations under the Agreement and does not undertake complete rectification within 30 days after a written notice to that effect, the other party shall be entitled to terminate the Agreement with immediate effect and receive compensation in accordance with provisions of the Agreement (including these General Condition)

### **14. Limitations of liability**

**14.1** Indirect losses are to be reimbursed only to the extent that this is expressly stated in the Agreement (including these General Conditions)

### **15. Confidentiality**

**15.1** The Supplier commits to maintain strict confidentiality regarding its relation with Mistra-Autex AS. Design, samples, drawings, plans, schedule or any other information supplied by Mistra-Autex AS is confidential and must not be used for any other purpose than the production of the Product for Mistra-Autex AS. The Supplier commits to ensure that all personnel and any third party manufacturers are maintaining the confidentiality. Any advertising or official statement to the effect that the Supplier is a Supplier of Mistra-Autex AS require Mistra-Autex AS's previous written consent. The Supplier agrees to at Mistra-Autex AS option, either return or destroy on Mistra-Autex's request any materials produced for or relating to the Product.

### **16. Force Majeure**

This GENERAL PURCHASING TERMS and CONDITIONS (version 2008) shall come into effect since 01.01.2009 or with first PO for new suppliers.

Confirmed by:

Riina Sikka  
Supply Chain manager

**16.1** Neither of the Parties shall be obliged to perform any obligation undertaken, if this is impossible by reason of Force Majeure, included but not limited to industrial disputes, strikes, lock-outs, riots, insurrection, fire, flood, embargo or by reason of regulations or orders of any government agency or any other circumstances beyond the control of the parties. Should deliveries be delayed by more than 6 months due to any these circumstances, either party shall be free to cancel the respective portion of an order for deliveries so delayed and unexecuted without incurring any liability towards the other party.

### **17. Cancellations of Orders**

**17.1** Mistra-Autex reserves the right to cancel any order or agreement for Products in case of any delays or defects. If the Supplier becomes insolvent Mistra-Autex is entitled to terminate any part of or the entire agreement with immediate effect

### **18. Administrative Fees**

**18.1** For any inspection, investigation, analysis or other work that Mistra-Autex in its discretion deems necessary in connection with the Supplier's delivery or production of non-confirming or otherwise defective Products. The Supplier shall pay Mistra-Autex a fixed administrative fee and an hourly fee per man-hour, according to Mistra-Autex's then current price-list.

### **19. Termination**

**19.1** In addition to the above a party is entitled to terminate the Agreement with immediate effect and without any liability for compensation due to such termination if the other party enters into composition negotiation, files for bankruptcy or liquidation or for any reason can be assumed to have become insolvent.

### **20. Law**

**20.1** The Conditions shall be governed by substantive Estonian law, excluding its conflict of law principles and the application of the Convention on the International Sales of Goods (CISG)