

# Tooling Conditions

Version: 2015

## I. Application

The following conditions shall govern the manufacture, the use and the maintenance of 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 U.S. LLC. (hereinafter referred to as "PG") for the production of PG-related parts (hereinafter referred to as "Tooling").

These conditions shall also apply, if the Supplier (manufacturer of parts) purchases the Tooling from third parties (sub-suppliers). Supplier's commencement of work on the Tooling or making the Tooling available for PG, whichever occurs first, shall be deemed acceptance of these conditions. Any proposal for additional or different conditions or any attempt by the Supplier to vary in any degree any of the terms of these conditions in the Supplier's acceptance is hereby objected to and rejected. But such proposals shall not operate as a rejection of these conditions unless such variances are in the terms of the description, quantity, price or delivery schedule of the Tooling. In these cases they shall be deemed a material alteration thereof, but the rest of these conditions shall however be deemed accepted by Supplier without said or additional or different 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, if requested and 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.

## III. Delay

The dates and time schedules stated in the order are of the essence; this shall apply as well to agreed milestones during the production time of the Tooling. In the event of delay, the Supplier shall be liable for all and any damages resulting there from according to applicable laws. [Notwithstanding the generality of the foregoing, for each business day after the completion date that the Tooling is not delivered by the Supplier and/or after the agreed milestones and after lapse of a grace period of [3] business days set by PG, the Supplier shall pay to PG in each case an amount of [0.5%] of the gross invoice amount as liquidated damages.]

## 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“.

b. 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.

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 consent. The Supplier shall inform 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 pay at any time prematurely the complete Tooling price. 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) Withdrawal of Tooling

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.

Until the withdrawal of the Tooling, the Supplier shall be liable, without limitation, for any breakdown, complete or partial destruction as well as for any other damages of the Tooling.

5) The Supplier authorizes PG to file anywhere one or more Uniform Commercial Code Financing Statements or similar document to acknowledge, perfect, protect or preserve PG's interest in the Tooling while not in the possession of PG. The Supplier authorizes PG to notify any entity, including secured creditors of the Supplier, of PG's interest in the Items.

## V. Warranties; Use of Tooling

1) The Supplier warrants that the Tooling will be (i) in strict conformance with all applicable specifications, drawings, instructions, data, samples, standards and regulations, (ii) merchantable, free from defects in design, material and workmanship, (iii) as described and advertised, of good quality, fit for the intended purposes, (iv) composed of all new components, (v) free from all liens, encumbrances and any actual or claimed patent, copyright or trademark infringement, and (vi) manufactured in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification of the Tooling. These warranties are in addition to all other warranties, express, implied or statutory, which may be applicable. PG's approval of the Supplier's design, material, process, drawing, specifications or the like will not be construed to relieve the Supplier of the warranties set forth herein. Limitations on PG's remedies (or disclaimers of warranties) in documents of the Supplier, or otherwise, will not be effective and are hereby objected to and rejected. All warranties and other provisions of this paragraph will survive inspection or acceptance of, payment for, and use of the Tooling and completion, termination, or cancellation of these conditions, and will run to PG, its customers, successors, and assigns, and to users of the Tooling. These conditions incorporate by reference, and will be governed by, the Uniform Commercial Code, latest revision, as enacted by the State of South Carolina, including all warranty protections (express or implied) and all buyer remedies set forth therein.

2) The Supplier shall guarantee that the Tooling and documentations are free from third parties' intellectual property rights. If intellectual property rights exist, the Supplier shall indemnify PG from all and any claims relating thereto and/or shall grant to PG free of charge a non-exclusive, world-wide, assignable and unlimited license for the

use of the Tooling and the thereto-related documentation for the production of parts.

3) 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.

4) 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 cost.

5) The Supplier shall be responsible that the follow-up Tooling is suitable and available for use as required.

6) 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.

7) The Supplier shall 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.

8) The Supplier shall, free of charge, maintain possession of the Tooling, store them duly, handle them in accordance with usual care and insure them for PG's benefit against fire, water, theft and damage. The insurance shall not release the Supplier from its own liability, neither on its legal grounds, nor concerning its extent.

9) 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.

10) The Supplier shall be liable for a safe and riskless application of the Tooling.

11) The Supplier acknowledges and agrees that all intellectual property and know-how developed or derived by the Supplier related to, or associated with, the Tooling and any other work product provided hereunder is all "work-made-for-hire" under the United States Copyright Act of 1976, as amended, and therefore, the property of PG as the author and owner.

12) The Supplier shall not disclose any documentation or information regarding the Tooling to any party other than PG or a party duly authorized by PG. Upon PG's request, the Supplier shall promptly return to PG all such documentation and copies.

## **VI. General Provisions**

1) These conditions shall be governed by and construed in accordance with the laws of the State of South Carolina, but without giving effect to South Carolina conflict of laws principles that could make the laws of any other jurisdiction applicable to these conditions.

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) Any and all disputes and claims resulting from or in connection with these conditions shall be brought only in the state and federal courts sitting in Greenville, South Carolina, which courts shall have the sole and exclusive jurisdiction over any such disputes. The Supplier agrees to submit to the jurisdiction of the courts identified in this Section and hereby waives any challenges to the jurisdiction of such courts.

3) 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.

4) The rights and remedies of the parties pursuant to these conditions are cumulative and not exclusive of any rights or remedies which the parties would otherwise have. No single or partial exercise of any such right or remedy by a party, and no discontinuance of steps to enforce any such right or remedy, will preclude any further exercise thereof or of any other right or remedy.