

General Terms and Conditions for Toolings by Webasto SE (Status March 2018)

1. Validity

- 1.1 These General Terms and Conditions for tools by Webasto SE and the companies connected with it according to §§ 15 ff. AktG (German Stock Corporation Act) (together "**Webasto**") shall apply to the construction, production, acquisition, delivery, performance, maintenance and repair of tools, machines and equipment for the production of products by Webasto and/or third parties commissioned by Webasto, devices and/or training of any kind (together "**Tools**"), which are necessary for delivering to Webasto AGB Werkzeuge products, parts, spare parts, components, aggregates, substances, materials and/or systems, including software contained therein or related thereto as well as associated documentation and the source and object code of this software (together "**Delivery Items**") from the respective the Supplier ("**Supplier**") for the purpose of producing Webasto products ("**Webasto Terms and Conditions for Tools**").
- 1.2 The legal relationship between Webasto and the Supplier (Webasto and the Supplier respectively also the "**Party**" and collectively the "**Parties**") in connection with Delivery Items and/or the ordering thereof by Webasto shall be based exclusively on these "Webasto Terms and Conditions for Tools". This applies also to all future business relationships for the acquisition of Delivery Items by Webasto, even if then the validity of the terms of these Webasto Terms and Conditions for Tools are not expressly agreed upon again. The acceptance of the Supplier's Delivery Items or Tools or payments made by Webasto to the Supplier without objection shall under no circumstances constitute recognition of other terms and conditions of the Supplier. WEBASTO OBJECTS TO ANY general terms and conditions, ADDITIONAL OR CONTRADICTING terms or conditions IN ANY OFFER OR ACCEPTANCE OF SUPPLIER, AND SUCH TERMS OR CONDITIONS SHALL NOT BECOME PART OF THE DELIVERY AGREEMENT. Separate, additional objection in individual cases is not necessary.
- 1.3 The Supplier shall ensure that the provisions of these Webasto Terms and Conditions for Tools find relevant application in the case of any subcontractors and/or third parties authorized by the Supplier. The Supplier shall be obliged to ensure that his subcontractors or third parties, for which the tools are permissible, comply with the provisions of these Webasto Terms and Conditions for Tools and grant Webasto the rights formulated in these Webasto Terms and Conditions for Tools. This applies in particular to the identification of tools as Webasto property. Irrespective of the ownership structure, the Supplier must treat all tools and other operating resources with the necessary care in order to ensure proper delivery to Webasto.
- 1.4 Amendments, supplements and side agreements to these Webasto Terms and Conditions for Tools shall be made in writing. This applies also to the change of the written form requirement according to Clause 1.4 Sentence 1.

2. Orders for Tools, Construction of Tools

- 2.1 Orders and contracts for the design, manufacture, purchase, delivery, use, maintenance and repair of tools ("**Tool Orders**" and "**Tool Contracts**") as well as their assumptions, changes and additions require the written form, but can also be made by fax or electronic data transmission. Furthermore, Tool Contracts shall come into existence if the Supplier begins to render the service, which is the subject of the Tool Order or the offer to conclude a Tool Contract.
- 2.2 A Tool Order by Webasto is an offer to the Supplier to conclude a Tool Contract. Prior to acceptance by the Supplier, Webasto may revoke a Tool Order at any time and without any liability towards the Supplier. A Tool Order does not represent acceptance of an offer by the Supplier unless expressly stated in the Tool Order. Any reference to offers or letters of Suppliers made in a Tool Order shall only apply with regard to the item referred to and only to the extent to which the Tool Order is not inconsistent with the item referred to.
- 2.3 The Tool Order and the Webasto Terms and Conditions for Tools shall be deemed to be accepted by the Supplier in their entirety and without any modification if the Supplier accepts a Tool Order in writing or by means of electronic data transfer or begins with the delivery of the goods or services set forth in the Tool Order.
- 2.4 If Webasto orders the manufacture of a tool from the Supplier, the Supplier shall submit to Webasto a tool manufacturing schedule upon acceptance of the Tool Order. Insofar as the schedule does not meet the deadline requirements agreed with the Supplier, Webasto may require an insight into the documents on which the Supplier's schedule is based to the extent necessary.
- 2.5 The Supplier designs and constructs the Tool in accordance with the specifications (especially technical data, construction drawings and/or CAD models of the Tool or individual parts thereof). The Supplier shall inform Webasto immediately in writing if, in his opinion, the specification is incorrect, incomplete or otherwise faulty. Changes to the specification by the Supplier require the prior written consent of Webasto. All design documents must be submitted to Webasto for information prior to start of machine production. Webasto is under no obligation to examine the design documents for errors or feasibility.
- 2.6 Unless otherwise agreed, the Supplier shall also submit to Webasto a tool progress check at intervals of two (2) weeks each as a target/actual comparison and, on request and at the agreed time, a tool drawing. Webasto reserves the right, during normal business hours and without prior notice, to check the state of production or the condition of the Tools on the Supplier's premises during the transfer in accordance with Clause 4 of these Terms and Conditions.

- 2.7 After completion of the tool, the supplier must provide Webasto with initial samples and a fully completed tool data sheet (including photo in open condition).
- 2.8 The design, quality and execution of the Tool must be based on the agreed technical specifications, functions, performance values and drawing requirements. The tool must be suitable for the production of the products specified by Webasto in the quality specified by Webasto and, in particular, must contain connections and other connection points in accordance with the current industry standard in order to be able to use the tool in the manner customary in the industry. The supplier shall ensure that tool manufacture is carried out in accordance with the latest state of the art and observing all relevant regulations and laws in a professional, faultless and timely manner. The Supplier's obligation to design the Tool also includes the associated documentation (all drawings, descriptions and other documentation, including CAD models and source codes of the Tool). Unless otherwise agreed, the documentation must be available in German or English or in the national language of the country in which the ordering Webasto company has its registered office.
- 2.9 Webasto's consent to the drawings, calculations and other technical documents transmitted to Webasto shall not affect the Supplier's contractual obligations for the Tools.
- 2.10 In the event that Webasto requests technical changes or extensions after ordering the tool, which require price changes or a postponement of the date, the Supplier shall submit a written offer with the date and cost consequences to Webasto prior to start of the modification work. Verbal agreements after placing the order require written confirmation. The supplier shall be liable for any additional costs or postponements, which were not accepted by Webasto in writing.
- 2.11 Should Webasto decide before completion of the tool that further work on it is to be discontinued, Webasto shall assume the costs which have been demonstrably incurred until then. The Supplier is entitled to demand the agreed remuneration. However, the Supplier must take into account that which he has saved as a result of discontinuing further work to complete the tool or which he acquires through other use of his labor or maliciously omits to acquire. Webasto expressly reserves the right to check the cost proof on site.
- 2.12 The supplier shall only be entitled to serial production of parts if Webasto's approval process has been successfully completed and the initial samples submitted for series production have been approved by Webasto. The Supplier shall produce the required number of initial samples of the parts under the conditions of series production and submit them to Webasto in accordance with the Tool Order or a separate initial sample order with the corresponding initial sample test report. The release of the Tool does not constitute an acceptance of parts, which have been produced with the tool, as error-free. The release of initial samples of the parts shall only constitute a release of the Tool insofar as they have been manufactured under the conditions of the series production and other release requirements have been met. Should the Tool or the initial samples and initial sample test reports submitted by Webasto not be released for series production, the Supplier shall bear any additional expenditure incurred as a result, unless Webasto is responsible for the non-issuance of the approval.

3. Subcontractors

The Supplier is not entitled to commission a subcontractor to manufacture tools or parts thereof without the prior written consent of Webasto. All information requested by Webasto about the subcontractor shall be provided by the Supplier prior to the granting of such consent, insofar as this is legally permissible. In addition, the supplier undertakes to provide Webasto the right to inspect the subcontractor's operation. If written permission is granted, the Supplier shall bind the subcontractor or - if relevant - other third parties in accordance with the provisions of these General Terms and Conditions for Tools. In any case, the Supplier's direct legal responsibility towards Webasto shall remain unaffected by the contracting of third parties.

4. Ownership, Labeling, Maintenance, Repair

- 4.1 The ownership of the Tool commissioned or ordered by Webasto or a part thereof shall become the property of Webasto already upon start of production or acquisition by the Supplier for all unfinished intermediate stages, including the accompanying documentation and any expectancy rights. Any prolonged or extended reservation of title of Supplier shall be excluded. Ownership is transferred irrespective of the payment of the Tool, and Webasto's obligation to pay in accordance with the current state of production remains unaffected. This transfer of ownership shall in no case constitute acceptance of the respective unfinished intermediate stages or the Tool.
- 4.2 Webasto shall provide the Supplier with the Tool and the associated documentation free of charge for the manufacture of Delivery Items until Webasto requests the surrender of such Tool and the associated documentation in accordance with Clause 6 of this contract (bailment). The supplier must mark the tool as Webasto's property in a clearly visible manner at the latest on completion of production. The tools provided by Webasto or the tools manufactured for Webasto must be marked clearly and permanently by the Supplier with the Webasto tool labels provided for this purpose. This also applies to partially completed Tools. Upon Webasto's request, the Supplier must also note down the Tool number(s) specified by Webasto in the Tool Order or provide photos to prove the marking.
- 4.3 The Supplier is responsible for the faultless functionality of the Tools, which it supplied by contract and while they are being used by Webasto, and the Supplier must ensure that the Tools are always in perfect working order for the purpose of faultless delivery to Webasto through ongoing maintenance and repair at his own expense. In particular, the Supplier shall be obliged

- a) to keep the Tools provided free of charge, to store them properly, to handle them with the appropriate care, to protect them against destruction, damage and environmental influences and to insure them against all insurable risks (All Risk) in favor of the purchaser, as is customary in the industry. Proof of this insurance shall be provided to Webasto upon request. The Supplier hereby assigns his claims from the respective insurance contract to Webasto, Webasto accepts this assignment.
 - b) to ensure that the Tool is in perfect working order and ready for use for the purpose of delivery to Webasto, as well as carrying out all maintenance and repair work, tool repairs and, if necessary, tool replacements as well as the removal of other defects and damage on time at its own expense, insofar as these are necessary in order to be able to manufacture parts in the quality and quantity specified by Webasto. Tool replacements shall be announced by the Supplier in writing and on time, and always and at any time require the presentation and release of new first samples by Webasto. In the event that the Supplier, for any reason whatsoever, is unable to ensure that the Tool is ready for use on time, Webasto shall be entitled to carry out the necessary maintenance, repair and replacement work on the Tool itself or to have it carried out by a third party at the Supplier's expense. In this case, the Supplier will provide the corresponding Tool on request for collection by Webasto or a third party named by Webasto. The Supplier shall bear the costs of transport and necessary repairs.
 - c) to keep complete and uninterrupted tool history. This includes in particular the recording of changes, maintenance, repairs on and quantities produced with the Tool.
 - d) to keep the Tools and documentation free of charge for a period of time determined by Webasto, but at least fifteen (15) years after the customer's serial production run has expired, unless Webasto reclaims them beforehand. Subsequent scrapping of the tools shall only be carried out with the prior written consent of Webasto.
 - e) to inform Webasto immediately if quantities planned by Webasto or quantities specified by Webasto or by an authorized third party in call-offs reach more than 80% of these quantities.
- 4.4 Insofar as the Supplier's copyrights have arisen in the design, manufacture and/or use of the Tools, the Supplier grants Webasto a free of charge, non-exclusive, transferable and temporally, spatially and objectively unlimited right to use the tools for the purposes of Webasto. In addition, the Supplier warrants that he is not aware of any further intellectual or industrial property rights to the Tools and the documentation, which could prevent Webasto from using the Tools freely. Should such rights of the Supplier exist, the Supplier hereby grants Webasto free of charge the non-exclusive, transferable, temporally, spatially and objectively unlimited right to use the Tool and the associated documentation for the manufacture of Delivery Items.

5. Use of Tools

- 5.1 Webasto shall transfer the Tools free of charge to the Supplier exclusively for the purpose of producing Delivery Items, parts thereof and/or spare parts for Webasto or for a third party named by Webasto in writing beforehand. The Tools may only be used for other purposes with the express prior written consent of Webasto.
- 5.2 Moreover, the Supplier undertakes to refrain from transferring the place of production of Tools or parts thereof as well as the Tool itself without the prior written consent of Webasto. The same applies when the Tools are with or are produced by a subcontractor.
- 5.3 Furthermore, the Supplier undertakes, even for a period of five (5) years after the completion of a respective Tool Order, not to reconstruct the Tool or have it reconstructed or to build a similar tool or have it built, insofar as products can be manufactured with it, which are in a competitive relationship with the Delivery Items and which are therefore suitable to place Webasto at a disadvantage or to hinder it in relation to the respective end customer to whom the Delivery Items are delivered or in whose products the Delivery Items are assembled.
- 5.4 In the case of culpable breach of the obligations to use according to Clauses 5.1 to 5.3 by the Supplier, Webasto shall be entitled to demand a contractual penalty of 0.5% for each commenced weekday of use contrary to duty after expiry of a reasonable period of time set by Webasto for discontinuing use contrary to duty, but not more than 10% in total of the value of the tool. Further or other legal claims remain unaffected by this, a contractual penalty is to be counted towards this. In the event of a breach of obligation according to Clause 5.1. the Supplier is obliged upon Webasto's request to immediately provide Webasto with information on the quantity and commercial customers of the Delivery Items and/or parts delivered in parallel. Webasto shall be entitled to have the information provided checked by an auditor commissioned by Webasto at the Supplier's expense. The Supplier shall also provide the corresponding information in the event of violations of the obligations according to Clauses 5.2 and 5.3.

6. Tool Release

- 6.1 Webasto is entitled at any time to demand the surrender of individual or all Tools, the associated documentation, tool life cycle and all existing individual and/or spare parts for the Tool. If Webasto orders the handover of the Tools or their transfer to another location or to a third party, the Supplier is obliged to carry out this arrangement without delay and upon first request. He shall be entitled to reimbursement of the associated costs for transport, freight and packaging. The Supplier has no right of retention on the corresponding Tools and documentation if the counterclaim is not undisputed or established by a legally binding judgment.
- 6.2 In the event of a culpable breach of the obligation to surrender the goods in accordance with Clause 6.1 by the Supplier, Webasto shall be entitled to demand a contractual penalty of 0.5% for each commenced weekday of the

delay after expiry of a reasonable deadline set by Webasto for surrender, but not more than 10% in total of the value of the tool. Further or other legal claims remain unaffected by this, a contractual penalty is to be counted towards this.

7. Tools Lists

The Supplier shall create a tool list after completion of the Tool and keep it up to date. The list includes all tools/tool sets (with tool numbers if agreed) with which Webasto Delivery Items are manufactured. For the individual tool positions, the identification number of the respective Delivery Item, which was manufactured with the tool/tool set must be listed. This tool list shall be made available to Webasto upon request.

8. Payment

- 8.1 Unless otherwise agreed, payment for Tools ordered shall be made after receipt of the number of initial samples produced with this Tool as specified in the Tool Order and written approval of the initial sample test report by Webasto (acceptance).
- 8.2 The Parties may agree that the costs of a Tool to be produced are to be allocated to a defined number of delivery items ("**Serial Parts**") and paid via the series price ("**Part Amortization**"). In this case, the agreed tool costs and the defined quantity of Series Parts will be shown separately in the order. In the purchase order, the parties further agree on individual production steps and deadlines ("**Milestones**") for the production of partially amortized tools and allocate the corresponding proportionate tool costs to each Milestone. Webasto has the right to make payments on the completed Tool before the end of the Part Amortization period. Insofar as the total amount calculated from the Part Amortisation has been reached, which relates to a certain number of items supplied ("**Part Amortisation Amount**"), the agreement on payment by way of Part Amortisation shall not apply.
- 8.3 In addition, Webasto shall be entitled to pay for a partially manufactured Tool during tool production. In this case, the agreed tool costs are reduced by the value share of the Milestones not achieved.
- 8.4 Upon request, the Supplier must provide Webasto with a detailed breakdown of the tool costs, which form the basis for the tool costs to be charged in accordance with the respective Tool Order, together with the relevant records and documents for verification by Webasto. Should Webasto determine that the actual costs were lower than the costs underlying the tool contract, Webasto shall be credited with the difference.

9. Deadlines

- 9.1 The deadlines and dates given in the Tool Order are binding. The Supplier shall reimburse Webasto for all costs arising herefrom.
- 9.2 If the delivery or initial sample deadline delay is caused by the Supplier, Webasto shall be entitled to demand a contractual penalty of 0.5% of the value of the tool for each commenced weekday of the delay, but not more than 10% in total of the value of the tool. Further or other legal claims remain unaffected by this, a contractual penalty is to be counted towards this. The right to claim a contractual penalty shall not be forfeited by the fact that in the case of delayed delivery of the initial samples, the right to claim the contractual penalty was not expressly reserved.
- 9.3 Should the delivery date be delayed for reasons for which Webasto is responsible, the Supplier shall be entitled to add the corresponding number of days to the delivery deadline. The contractual penalty does not begin until the newly calculated calendar day has expired. This extension shall only be permitted if the Supplier informs Webasto in writing immediately after the delay caused by Webasto has become known, that the extension right has been exercised.

10. Defects

- 10.1 The Supplier warrants that the Tool and the documentation a) are manufactured in accordance with the specifications and comply with the specifications, b) are state-of-the-art, c) comply with all relevant legal regulations, guidelines and other provisions, d) are free of defects and of market-standard, but at least of agreed or sufficient quality and are suitable for the use agreed between the Parties, and e) are suitable for producing faultless parts in accordance with the specifications and technical documentation. Any Tools, which are found not to meet any of the above-mentioned requirements, shall be deemed to be "**Defective Tools**".
- 10.2 The Supplier must rework defective Tools within the period reasonably set by Webasto. If the rework is not successful within this period, or if reworking by the Supplier is not possible or economically reasonable, Webasto shall be entitled at its own discretion to carry out the repair itself or have it carried out by a third party at the Supplier's expense, or to terminate the Tool Contract without notice for good cause or to withdraw from it.
- 10.3 The warranty period for delivery items shall be thirtysix (36) months from the release of the initial samples for series production, insofar as no other deadline was agreed in the Tool Order.
- 10.4 Along with the rights according to Clause 10.2, the Supplier shall be liable to Webasto in particular for all damages and costs incurred by Webasto from and in connection with the defective Tool, in particular for the analysis of expenses incurred for the purpose of supplementary performance, in particular transport and travel costs, labor costs (e. g. inspection, sorting, removal and installation costs) as well as material costs and costs to avoid damage.

10.5 In all other respects, the statutory provisions shall apply.

11. Liability

- 11.1 Until such time as the Tool is handed over to Webasto, the Supplier shall be liable without limitation for all defects, damages, modifications or deterioration, total or partial loss of the Tool and/or the limited usability of the Tool due to third party rights as well as all damages to the Tool.
- 11.2 The Supplier is not aware that Webasto infringes the rights of third parties by owning or using the Tools and documentation. In the event of such violations, the Supplier shall indemnify Webasto against any third party claims to the extent permitted by law.
- 11.3 The Supplier must also ensure that the Tools do not cause any personal injury and/or damage to property. The supplier shall indemnify Webasto against such claims for damages.
- 11.4 Webasto's other legal or contractual rights, especially for product liability reasons, unallowed handling and/or unlawful acts and agency of necessity, remain unaffected by the stipulations of Number 11.

12. Functional Guarantee

- 12.1 If the Supplier has manufactured the Tools on the basis of a Tool Order from Webasto for the purpose of producing Delivery Items for Webasto, he guarantees that the Tools will function correctly during their use. This applies especially for an agreed upon minimum output quantity. Insofar as the agreed output quantity cannot be produced with a Tool, in particular due to tool breakage or heavy wear and tear, the Supplier is obliged to produce a replacement tool at his own expense. With regard to the ownership of the replacement tool, the regulations under Clause 4 shall apply.
- 12.2 If the tools provided by Webasto to the Supplier were not manufactured by the Supplier or on his behalf, but by Webasto and/or its customers, the Supplier shall, upon acceptance of the tools, check them for their suitability for the contractually agreed delivery to Webasto and, if necessary, submit a written offer to Webasto for the necessary repair measures. With the execution of the repair work commissioned by Webasto to the Supplier, the Supplier assumes the guarantee for the functionality of the tools in accordance with Clause 12.1. Irrespective of this, the remaining provisions of these Webasto Terms and Conditions for Tools shall apply accordingly, in particular also to tools provided by Webasto's customers.

13. Secrecy

The Supplier undertakes to treat all non-public commercial and technical documents, information and/or data of Webasto, which are made available to him in the context of a Tool Order, as business secrets and confidential and in particular not to publish models, templates, matrices, samples, measuring instruments, devices, molds and associated software, e. g. CAD, specifications, in particular drawings, confidential details and design data and similar objects or to otherwise disclose them to unauthorized third parties and not to use them for any purpose other than the manufacture of the Tool or Delivery Items for Webasto. Subcontractors, authorized third parties and co-workers shall be bound accordingly.

14. Ending the Contract

- 14.1 Webasto shall be entitled to terminate the respective Tool Order in full or in part in writing at any time and without notice, in addition to other statutory termination rights,
- a) as long as the Tool has not yet been produced. In this case, Webasto shall reimburse the Supplier for the expenses, which have demonstrably arisen, up to the maximum amount of the agreed remuneration. and which are directly resulting from the Tool Order. The Supplier shall not be entitled to any further claims for performance or damages beyond this on the occasion of termination.
 - b) if the Supplier breaches contract and fails to remedy such breach of contract within ten (10) days or if the Supplier causes immediately successive, significant delays in delivery,
 - c) if a petition in bankruptcy is filed against the Supplier's assets or out-of-court settlement proceedings are commenced (by the Supplier or by a third party, provided that the petition is not filed in abuse of rights) or applied for, even if the petition was dismissed for lack of assets,
 - d) if reasons for the opening of insolvency proceedings or a similar procedure on the assets of the Supplier exist or foreclosure proceedings have been instituted against the Supplier's total assets or a substantial part of such assets,
 - e) if a material change in the ownership structure or the shareholders participation in the Supplier's company occurs, due to which Webasto cannot reasonably be expected to continue the Delivery Contract,
 - f) if Webasto's customer terminates the Delivery Contract/project for which the Tool was required in whole or in part or modifies it in such a way that the Tool is no longer required,
 - g) if the Supplier's financial situation deteriorates significantly and thus jeopardizes the stability of the supply or if the

Supplier stops making payments.

The Contractor undertakes to notify Webasto immediately in writing of the occurrence of one of the events mentioned here.

- 14.2 In the event of termination, the Supplier shall return to Webasto all property of Webasto, including tools and documentation, upon request by Webasto, Clause 6. shall apply mutatis mutandis.
- 14.3 Insofar as deliverables were supplied for Webasto by the Supplier in the context of the Tool Order, which were not yet the property of Webasto at the time of cancellation, Webasto has the right to acquire these. The price depends on the degree of completion according to the respective Tool Order. Amounts already paid as part of the tool order will be offset. These principles with regard to the remuneration of the Supplier's services shall apply mutatis mutandis in the event that Webasto already became the owner of the services before termination.
- 14.4 Insofar Webasto is granted rights of use to rights, in particular within the scope of Clause 4 of this Tool Contract, these rights of use shall remain in full force and effect in Webasto's favour, irrespective of any subsequent termination.

15. General Terms

- 15.1 Should any provision of these Webasto Terms and Conditions for Tools or the further agreements made be or become invalid, the validity of these Terms and Conditions for Tools or the further agreements made shall remain unaffected. The Parties are obligated to replace the ineffective provision with a regulation which matches as closely as possible in its economic success. The same applies in the case of a contractual gap.
- 15.2 Insofar as these Webasto Terms and Conditions for Tools do not contain any express regulations, the provisions of the Webasto Terms and Conditions shall apply. In the event of a contradiction of these two sets of rules, these Webasto Terms and Conditions for Tools shall take precedence over the Webasto Terms and Conditions as a more specific regulation.