



**ACS GENERAL TERMS AND CONDITIONS OF PURCHASE**

**No. BR\_FM\_253C of 07/03/2011**

**Cancelling and superseding all earlier versions**

Please note that this document is a translation.  
In the event of a dispute, the French document shall be used.

## 1- SCOPE OF APPLICATION

These General Terms and Conditions of Purchase (the “**Terms and Conditions**”) will apply to all purchases of Products by companies in the ACS Group from any of their suppliers (hereinafter, a “**Supplier**”) and to any request for a quote or any commercial offer made by a Supplier. This means that whenever a Supplier submits a quote or makes a commercial offer to any ACS Group company it accepts these Terms and Conditions.

The contractual relationship between the ACS Group company and the Supplier (the “**Contractual Relationship**”) will therefore be governed by the following contractual documents, the list of which may be modified depending on the nature of the Products (hereinafter, the “**Contractual Documents**”):

- ◆ Special Terms and Conditions, if any, and the documents expressly referred to therein
- ◆ Order
- ◆ Specifications
- ◆ these Terms and Conditions
- ◆ SPQAP
- ◆ Logistics Charter
- ◆ Supplier Quality Assurance Handbook.

ACS will not be bound by any provisions that are not contained in the Contractual Documents without its prior, written agreement. These Terms and Conditions will apply in their entirety to the Contractual Relationship, subject to any provisions to the contrary in the Special Terms and Conditions. They will take precedence over any general or special terms and conditions of sale issued by the Supplier.

In the event of any contradictions between the Contractual Documents, they will apply in the order of priority in which they are listed above.

## 2- DEFINITIONS

Unless stipulated otherwise herein or in the Special Terms and Conditions, words and expressions beginning with a capital letter will have the meanings defined below.

“**ACS**” means a company in the ACS Group that contracts with a Supplier by means of an Order, irrespective of any other parties involved in the negotiation or fulfilment of the Order.

“**ACS France SAS**” means Advanced Comfort Systems France SAS, a *société par actions simplifiée* (simplified limited company) having its registered office at 5-7 Rue du Moulin Jacquet, Parc d'Activité Moulin Jacquet, 79300 Bressuire, listed in the Niort Trade and Companies Register under number 652 039 611.

“**Call for Delivery**” or “**Delivery Instructions**” means a firm expression of ACS' need for Products, sent to the Supplier by any previously agreed electronic means, stating the quantity of Products and the delivery date. Calls for Delivery are issued when an Open Order has been placed, and are equivalent to Closed Orders. Calls for Delivery may also contain forecasts of ACS' needs over a future period of time, which are provided for information only and are not binding on ACS.

“**Order**” means an Open Order or a Closed Order, as the case may be, placed with a Supplier by ACS in accordance with these Terms and Conditions and the Special Terms and Conditions, if applicable.

“**Closed Order**” means a firm order for a set quantity of Products at a set price for delivery by a set date.

“**Open Order**” means an order for Products that stipulates prices but does not stipulate any set quantity or delivery date, as these will be stipulated later by means of Calls for Delivery.

“**Special Terms and Conditions**” means the special terms and conditions agreed in writing by ACS and a Supplier concerning a given Product, irrespective of the form (contract, special terms and conditions or any other written document signed by the parties).

“**Proprietary Knowledge**” means any fact or information of any kind whatsoever relating to the Products that are the subject of the Contractual Relationship, irrespective of the medium or form, including strategic information, information on technical developments, data, documents, experience, know-how, methods, tooling designs, processes, specific components or software, whether or not this can be protected under Intellectual Property Rights, that is in the possession of either party prior to the effective date of the Contractual Relationship or that either party may obtain after this date other than as a result of the Contractual Relationship.

**“Supplier’s Progressive Quality Assurance Plan”** or **“SPQAP”** (in French, DPAQF - *Démarche Progressive d’Assurance Qualité Fournisseur*) means a document relating to a given Product that describes the various phases of the ongoing improvements to be made to achieve the desired level of quality and stipulates, in particular, quality commitments and deliverables.

**“Contractual Documents”** has the meaning defined in Article 1.

**“Intellectual Property Rights”** means all copyright and other artistic and industrial property rights including patents, trademarks, drawings and models, plans, processes, know-how, trade secrets, software programs, and any related or equivalent rights.

**“SOP”** or **“DMS”** means the start of production after approval of the IS for all the components on the bill of materials of the manufactured product.

**“Initial Samples”** (“IS” or “EI”) means the Products produced as a result of the batch production process or a process simulating the batch production process, submitted for acceptance by ACS and/or its customer, together with the necessary documents and items needed to verify the quality of the production process, the suitability of the Products for their intended use and purpose, and their conformity with the Specifications. After acceptance, the IS will constitute the reference Products against which the batch-produced Products can be compared. It is stipulated that acceptance of the IS will not release the Supplier from any of its obligations as set out herein. Upon acceptance of the IS, partial payment will be due for the OSF created to manufacture the Products, unless stipulated otherwise.

**“Subsidiaries”** mean the companies controlled by ACS France SAS.

**“Force Majeure Event”** means any unforeseeable, unavoidable event that is beyond the control of the party concerned thereby and is not caused by any fault or negligence on its part, which has the effect of making it temporarily impossible for the party to perform its contractual obligations. It is understood that strikes by the Supplier’s employees will not be treated as Force Majeure Events under any circumstances.

**“Supplier”** has the meaning defined in Article 1.

**“Products”** means all materials, supplies, products, parts, bodies, components, tools, equipment, software and services.

**“Supplier Quality Assurance Handbook”** means the document prepared by the ACS Group (reference BR-PR-016 - *Guide d’Assurance Qualité du Fournisseur*) that defines the general specifications applying to any Products ordered from any Supplier by the ACS Group.

**“ACS Group”** means ACS France SAS and its Subsidiaries.

**“Information”** means any information of any kind (commercial, technical, industrial, financial or other), irrespective of the medium used (written, oral, electronic or other), that is given to the Supplier by an ACS Group company or to which the Supplier has access in any way whatsoever, that relates to the business of the ACS Group and/or the Contractual Relationship, including the Contractual Documents.

**“First Serial Samples”** (“FSS” or “IOD”) means the first parts produced by the definitive OSF.

**“Defect”** or **“Defective Product”** means that Products do not comply with any one of the requirements set out in the Contractual Documents or do not meet ACS’s reasonable and legitimate expectations.

**“OSF”** is an abbreviation for *“Outillages Spécifiques Fournisseur”* (Specific Supplier Equipment) and means all moulds, tools and other special equipment supplied by an ACS Group company or one of its customers or manufactured at the request and on behalf of an ACS Group company or one of its customers in order to manufacture a Product.

**“Logistics Charter”** means the document prepared by the ACS Group (reference EAA019A – *Protocole Logistique*) that defines all the rules applying to any Supplier and any Products, designed to reduce production cycles and improve procurement, production and distribution flows, as part of a global quality and cost control process.

**“Contractual Relationship”** has the meaning defined in Article 1.

**“Results”** means anything new that is the result of work entrusted to the Supplier by an ACS Group company, or carried out jointly, as part of research work, collaboration or any other form of technical cooperation, the objective or result of which is to develop Products or adapt a Product for use with a product of the ACS Group or one of its customers, irrespective of the type or form, whether or not it can be protected under Intellectual Property Rights (including deliverables, studies, creations, patentable or non-patentable innovations, processes, know-how, models, tests, samples, prototypes, software programs, IT applications, specifications, databases, designs, information, names or logos). It is understood that Proprietary Knowledge is excluded from this definition.

**“Technical Requirements”** (“TR” or “STB”) means all the documents describing the ACS Group’s specific requirements in connection with a given Product.

**“Specifications”** means all the documents and items (specifications, STB, plans, models, etc.) describing the technical and qualitative characteristics of a given Product so as to ensure it is fit for its intended use and purpose.

**“Kick-Off Tooling”** means written permission given by ACS or its customer to create an OSF.

### 3- ORDERS

To be valid, Orders must be issued and duly and properly signed by an ACS representative. Orders will be sent by post, fax or any previously agreed electronic means (e-mail or EDI).

Orders will stipulate the terms and conditions applying to the Order including, in particular, the price and transportation details and, for Closed Orders, the quantities ordered, delivery dates and places of delivery. Orders will mention the applicable Special Terms and Conditions, if any exist.

Delivery dates correspond to the date the Product will be delivered to the place of delivery stipulated on the Order or the Call for Delivery.

The Supplier will have eight (8) days in which to confirm receipt of the Order by post, fax or any previously agreed electronic means (e-mail or EDI). The Supplier’s confirmation of receipt will signify its unreserved acceptance of the Order and the Specifications, and it may not contain any modification, deletion, addition or supplementary clause that has not been agreed by the parties. Failing acceptance within eight days, start of work to fulfil the Order will signify express acceptance of the Order and the Specifications.

If an Open Order is placed for Products, the Supplier acknowledges that any quantities that may be stated in the Contractual Documents are stated on an information-only basis, and do not constitute an undertaking to purchase by ACS. Accordingly, the Supplier will not be entitled to claim compensation or a price adjustment if the quantities actually ordered are below the quantities indicated.

The Supplier acknowledges that Orders are placed in connection with an order between the ACS Group and one of its customers. Accordingly, in the event the customer cancels or suspends the order, irrespective of the reason (including because the vehicle or spare part is no longer being produced), the Supplier agrees in advance that the Contractual Relationship will be terminated in accordance with Article 16 below.

### 4- PRICE

The applicable prices are the prices stated in the Order. Stated prices correspond to the full purchase price for the Products. They are all-inclusive, full, firm and final and remunerate the Supplier for all its costs, disbursements, expenses and obligations. Prices include packing and packaging, loading and the safe and secure stowage in the means of transport.

Prices may also include transportation, insurance, unloading and handling, depending on the agreed delivery terms, as stipulated in the Order or the Calls for Delivery by reference to the Incoterms 2010 or any subsequent version.

Prices may not be modified without the parties’ prior, written agreement.

The Special Terms and Conditions, if any, may provide for a reduction in the agreed price to reflect the Supplier’s productivity gains due to its increased experience of manufacturing the Products.

## 5- SUPPLIER'S OBLIGATIONS

### 5.1 Main Obligations: Quality – Compliance – Timing

#### 5.1.1 Quality – Compliance

In its capacity as a professional, the Supplier represents that it is fully aware of the constraints and requirements applying to the automotive industry, in particular with regards to quality, safety, costs and timing. It undertakes to deliver Products that comply with the industry norms and standards and the applicable laws and regulations, in particular those relating to health and safety, the environment and employment, in each of the countries in which the Products are manufactured and, as regards marketing of the vehicles, in the whole world.

The Supplier will indemnify and hold the ACS Group harmless against any action or proceedings arising from non-compliance with these provisions and will bear all direct and indirect consequences thereof, so that none of the ACS Group companies are troubled in this respect.

The Supplier also undertakes to deliver Products that are completely suited for their intended use and purpose in normal conditions of use, as described by the Supplier, and also comply with the Contractual Documents.

#### 5.1.2 Organisation – Checks – Continuous Supply

The Supplier is responsible for the technical choices it makes in order to perform its obligations under Article 5.1.1. Accordingly, it will take due note of the intended use and purpose of the Product. The Supplier will carry out checks on the Products of any sort that it considers appropriate, and ACS will not be required to carry out any such checks.

The ACS Group reserves the right to visit or inspect the premises of the Supplier or any authorised subcontractor, to ensure the Order is being fulfilled correctly.

The Supplier will put in place appropriate means to ensure ACS can be supplied in line with the Calls for Delivery even if the Supplier is affected by an adverse event. The Supplier undertakes in particular that it will put in place a system that meets the ACS Group's needs in the event of any problem and covers, in particular, response times, security, analysis and management of Defects, stock replacements, joint site inspections and work to be carried out on the customer's premises.

#### 5.1.3 Timing

Deliveries must be made by the dates stipulated in each Closed Order or Call for Delivery. Early deliveries will not be accepted unless agreed otherwise, in which case the Supplier will bear the costs.

If the Supplier fails to deliver by the agreed date it must use its best efforts to deliver the Product as soon as possible, without any need for a formal notice to this effect. The Supplier must also compensate the ACS Group for all direct and indirect costs, including in particular costs incurred in connection with any production stoppage at ACS France SAS and/or its Subsidiaries and/or its customers caused by failure to respect the delivery date.

Furthermore, in the event of recurrent delays ACS will be entitled terminate the Contractual Relationship in accordance with Article 16 below, without prejudice to the ACS Group's right to compensation. Any extra costs incurred in connection with an order for Products placed with a third party will be borne by the Supplier.

#### 5.1.4 Spare Parts

When the Product is a spare part, acceptance of the Order will signify an undertaking on the part of the Supplier that it is capable of supplying the Product to ACS for a further fifteen (15) years after mass production of the main model of vehicle using the Product is stopped.

### 5.2 Obligation to Inform

The Supplier must provide ACS with all necessary information and advice about the Products, including in particular their storage, their fitting as component parts of the products manufactured by the ACS Group and/or its customers, and their use.

In this connection the Supplier is specifically required to:

- submit proposals concerning modifications to the Specifications that might improve the quality and/or reduce the cost of the Products;
- promptly inform ACS of any defect it identifies in the Products in order to minimise the adverse consequences thereof.

Furthermore, the Supplier is required to promptly inform ACS of any circumstances of which it becomes aware that might affect in any way whatsoever the proper fulfilment of the Order and/or the quality of the Product (such as production problems, problems with a subcontractor, inventory shortages, etc.).

The Supplier is required to inform ACS of any change in its structure or organisation, including any change to its capital, capital ownership or the identity of the individuals with authority to commit the Supplier.

### 5.3 Improving Products and Productivity

Without prejudice to any price reductions that may be agreed in the Special Terms and Conditions, the Supplier must use its best efforts to continuously improve the technical features of the Product and its production process, with the ongoing objective of reducing production costs and improving the quality of the Product, and more specifically its durability. The Supplier must keep ACS regularly informed of all action taken in this connection and the results thereof.

### 5.4 Personnel

The individuals who carry out work in connection with an Order on the premises of the ACS Group and/or its customers must comply with each site's internal rules and regulations, in particular when the tasks require the individual to hold a welding and cutting permit, entail a prevention plan or are confidential. Rules on entering and leaving buildings must be complied with. The ACS Group cannot be held liable for any accidents sustained by such individuals when on its premises, except in the event of wilful negligence (*faute intentionnelle*).

### 5.5 Parts and Raw Materials Provided to the Supplier

In the event ACS provides the Supplier with parts, assemblies or sub-assemblies of raw materials, the Supplier undertakes to ensure by any means that they are kept safe and in proper condition. It will also take all necessary industrialisation and custody measures to ensure they are not confused with other goods, so that ACS can exercise its right to claim and recover them at any time in the event of any insolvency or similar proceedings. The Supplier undertakes not to offer such parts or raw materials as a security interest in any form whatsoever (lien, pledge or any other type).

## 6- INVOICING - PAYMENT

Invoices must be drawn up in accordance with the statutory and regulatory obligations and must contain at least the following information: Order number, references, a description of the Product, quantity, price and the currency stated in the Order; they must also refer to the corresponding Order.

Invoices are payable by the agreed due dates as stipulated in the Order.

Payment does not signify complete acceptance of the Products delivered and/or the price charged, nor does it signify a waiver of rights to recourse. Penalties for late payment cannot exceed three times the legal interest rate.

Products are payable by bank transfer, and the following discounts will be granted:

- ◆ 3% for all payments within 15 days from the date of receipt of the invoice and goods
- ◆ 2% for all payments within 30 days from the date of receipt of the invoice and goods
- ◆ 0% for all payments 30 days or more after the date of receipt of the invoice and goods

ACS reserves the right, in particular, not to pay one or more invoices if Defective Products are delivered, in the event of late delivery or if it is established that the Supplier used subcontractors to fulfil all or part of the Order and did not comply with its obligations pursuant to Article 3 of the Act of 31 December 1975 on subcontracting. This provision will also apply to any transportation services not provided directly by the Supplier.

ACS will be entitled to offset any sums owed by the Supplier in any connection whatsoever.

In the event the Order concerns OSF (and/or related intellectual services) and the Supplier is the subject of a court order placing it in protection proceedings, administration or liquidation or any comparable proceedings before ACS has paid any instalment on the Order, the due date of the instalment as stipulated in the Order will be automatically deferred to the date on which the administrator or other body or person with authority has given an undertaking that the Order will be fulfilled.

## 7 - DELIVERY

Delivery times and dates stipulated in a Closed Order, or in Calls for Delivery in the event of an Open Order, are mandatory, essential and determining conditions without which ACS would not have entered into the contract, given the nature of its business and its obligations towards its customers. The Supplier has an absolute obligation (*obligation de résultat*) with regard to such conditions and will be personally responsible for putting in place the necessary logistics before the Order.

In the event of the Supplier's default ACS will be entitled to:

- ◆ automatically cancel the remainder of the relevant Order for the Products still to be delivered;
- ◆ and/or obtain the remainder of the Order from another supplier, at the expense and risk of the defaulting Supplier. In that case, the Supplier must grant the ACS Group unrestricted and unreserved use of any Intellectual Property Rights and Proprietary Knowledge that it used in connection with the Order, free of charge;
- ◆ and/or demand delivery of the relevant Products "as is" together with the OSF and other production tools and equipment, in which case the ACS Group reserves the right to arrange for their completion by a third party;
- ◆ and/or charge penalties corresponding to 5% of the amount of the Products covered by the Order.

ACS will not be required to take delivery of and/or accept non-compliant deliveries under any circumstances, whether or not the non-compliance is due to early delivery, late delivery or defective Products. All deliveries must be made on business days during the hours the site taking delivery is open for business. Excess products may be stocked at the Supplier's expense. A detailed delivery slip must be enclosed whenever Products are delivered to a site, which will reiterate the information in the Order (place, date, quantities, serial number, etc.).

The Supplier must define, and carry out prior to each delivery, all the checks needed to verify the quality of the Product's design and making (quality, cost, delivery dates). ACS will not be required to carry out any checks on the Products delivered other than those stated in the Supplier's Quality Assurance Handbook. The sole purpose of the Product checks ACS makes after delivery is to prepare a list of reservations to be given to the carrier. Checks will therefore be limited to verifying that the delivery units (handling units, packaging units, etc.) are consistent with their apparent condition and quantity. Completion of the checks will be evidenced by signing the delivery slip and carrier's documents and noting any reservations.

If the checks are satisfactory ACS will be required to take delivery of the Products and pay the price.

In any event, Products that are declared defective or non-compliant in accordance with the foregoing will be sent back to the Supplier in the following manner:

- Products purchased "ex-works" will be sent back with carriage costs paid if the carrier's liability is incurred or carriage costs payable in all other cases;
- Products purchased "delivered" will be sent back with carriage costs payable.

Any formalities whatsoever completed on arrival of the Orders, such as signing the delivery slip, counting packages and other checks and controls will not signify that ACS has taken final delivery of the Products or formally accepted them.

All items must be delivered in the packaging stipulated in the Contractual Documents, which must be suitable for the handling, safekeeping, transportation and storage of the Products and designed to avoid the risk of damage. Containers and external packaging owned by the Supplier will be returned to it, at its expense. Maintenance and cleaning of all returnable containers and external packaging will be the responsibility of the Supplier, irrespective of ownership.

Prior to delivery of any dangerous substances, as this is defined in the regulations, a safety document must be prepared and sent, in compliance with the French Employment Code (*Code du Travail*).

All packaging must display the information stipulated in the Contractual Documents and the information required by the laws and regulations applicable in the country of destination.

## 8 – WARRANTY / LIABILITY

The Supplier has an absolute obligation (*obligation de résultat*) and, as such, and irrespective of any assistance with Product development given by the ACS Group, the Supplier is fully responsible and liable for the Product, its design, its manufacturing process, the technical choices made for its creation and its compliance with its intended use and purpose, of which the Supplier represents it is fully aware.

The Supplier warrants the Product against all Defects, including design defects, material defects, manufacturing defects or any other flaw or defect, including patent or latent defects.

The Supplier also warrants that the Product will be manufactured using new parts.

The Supplier acknowledges that ACS Group customers, who provide their end customers with a warranty covering the vehicles sold and spare parts against latent defects as required by law (Articles 1625 and 1641 of the French Civil Code) and a contractual warranty (the duration of which may vary depending on the car maker), reserve the right to demand that the ACS Group bear the consequences of their obligations towards their end customers if the ACS Group is found to be liable.

Accordingly, in the event ACS France SAS or one of its Subsidiaries is required to bear all or part of the warranty obligations of its customers towards their end customers, ACS France SAS or the relevant Subsidiary will be entitled to take action against the Supplier if the Supplier is found to be liable.

In the event ACS France SAS, one of its Subsidiaries, one of their customers or any competent authority decides to recall a Product or a product in which the Product is fitted, the Supplier will indemnify and hold the ACS Group harmless against all resulting loss or damage.

The Supplier undertakes to indemnify and hold the ACS Group harmless against the consequences of bodily injury, damage to property and consequential loss, including damage to the ACS Group's brand image, and to compensate it for all direct or indirect costs that may directly or indirectly result from the Supplier's failure to perform any or all of its obligations, or any delay in the performance thereof. Accordingly, the Supplier will, in particular, bear the cost of the following: reimbursement or replacement, free of charge, of a faulty Product, repairs, labour, sorting, temporary staff, special transportation, production stoppage at ACS France SAS, its Subsidiaries and/or their customers, damage limitation campaigns, recalls, penalties and fines and ordering the Product or tools from a third party. Any clause that might limit this warranty will be deemed inexistent.

Audits carried out, advice provided or any other action taken by the ACS Group will not release the Supplier from the above warranty in any way.

Without prejudice to its right to compensation pursuant to this article, ACS will be entitled to terminate all or part of the Contractual Relationship in the event of the Supplier's default and entrust the work to a third party of its choice, at the Supplier's expense.

## 9 - INSURANCE

The Supplier is required to take out and maintain "professional civil liability" and "product liability" insurance policies with a reputed creditworthy insurance company covering the financial consequences of its liability for bodily injury, damage to property or any consequential loss or damage suffered by ACS Group companies, their directors, corporate officers, employees and/or agents or any third parties as a result of its products and/or of the performance of its obligations under the Contractual Relationship. Insurance cover in no way limits the Supplier's liability.

The Supplier's insurance policy must also cover product recalls.

The Supplier undertakes to provide ACS with copies of said insurance policies and a certificate of payment of the premiums, on request.

## 10 - OSF

Subject to the provisions of any loan agreement entered into with the Supplier, the OSF shall be governed by the following.

The OSF and the related Intellectual Property Rights are the sole property of ACS, or its customer, or will become its property as and when they are created. Accordingly, the Supplier is required to identify them by affixing a plate stating ownership by ACS or its customer, and ACS or its customer may take possession of the OSF at any time, in which case the Supplier will not be entitled to any compensation. The Supplier will promptly provide ACS with a clear, detailed list of the OSF in its possession whenever this is requested.

The OSF are made available to the Supplier under a 'loan for use' and must only be used for production on behalf of the ACS Group or its customer. OSF may not be transferred to a third party, transformed, destroyed or offered as a security interest of any type whatsoever, without the prior, written authorisation of ACS.

The Supplier, in its capacity as custodian of the OSF, warrants that the OSF will be properly maintained, held in custody and checked, and that any preventive work and/or repairs will be carried out or they will be replaced, to avoid any problems with the production process or any supply shortage. It accepts sole responsibility and liability for all risks associated with custody and must insure each OSF for its replacement-as-new value. Insurance will also cover any loss or damage caused to third parties by the OSF.



The Supplier will provide ACS with documentary evidence thereof, on request.

The Supplier expressly authorises the ACS Group, in the event of the Supplier's default, to use the OSF in its possession together with all other production means necessary to manufacture, have manufactured or render compliant Products that should have been delivered, for so long as the default persists.

## **11- TRANSFER OF OWNERSHIP AND RISKS**

Transfer of risks will take place in accordance with the agreed delivery terms, as defined in the Order or the Call for Delivery, by reference to the Incoterms 2010 or any subsequent version.

With the exception of the OSF, transfer of ownership of the Products will take place at the same time as the transfer of risks.

For OSF Orders, the transfer of ownership to ACS or its customer will take place gradually as and when they are created on the Supplier's premises. The transfer of risks to ACS will take place only if the OSF are delivered to ACS, on the date ACS records its unreserved acceptance thereof at the agreed place of delivery.

## **12 –ORDER MODIFICATIONS**

Any modifications to any part of an Order, of any kind whatsoever and for any reason whatsoever, will require the prior, written agreement of the parties and must be recorded in a rider to the Order or a new Order, as appropriate.

The Supplier specifically undertakes not to modify the Product or its production process, or to change the production site, without ACS' prior, written agreement. In that case, all the procedures and actions that resulted in the placing of the Order must be carried out again and a rider to the Order or a new Order must be signed, as appropriate.

Modifications will apply from the agreed date of effect. Application of the modifications to any Closed Orders and/or Calls for Delivery in progress must be agreed by the parties on a case-by-case basis. Failing agreement, the earlier terms and conditions will apply to the Closed Orders and Calls for Delivery in progress.

If there is a risk that a component or raw material used to manufacture a Product may become permanently unavailable, the Supplier will promptly inform ACS and the parties will jointly study an alternative solution that will ensure a continuity of supplies for ACS.

## **13 – INTUITUS PERSONAE / SUBCONTRACTING / CHANGE OF CONTROL**

The Contractual Documents are entered into by ACS in view of the identity of the Supplier. Accordingly, the Supplier undertakes not to subcontract, transfer or assign in any way whatsoever, including by means of a capital contribution or merger, any or all of its rights and obligations under the Contractual Documents without the prior, written authorisation of ACS.

In the event of an authorised subcontract, transfer or assignment the Supplier will remain jointly and severally responsible and liable towards ACS, with the subcontractor or transferee, for proper performance of the Contractual Relationship in accordance with the Contractual Documents.

Furthermore, the Supplier undertakes to promptly inform ACS in writing of any direct or indirect change of control. ACS will then be entitled to terminate the Contractual Relationship without notice and without payment of any indemnities or compensation of any kind whatsoever.

## **14 – INTELLECTUAL PROPERTY**

### **14.1 ACS Group's Intellectual Property Rights**

The Intellectual Property Rights relating to the Specifications are the exclusive property of the ACS Group and/or its customers, on the understanding that the technical solutions developed exclusively by the Supplier outside of the scope of the Contractual Relationship that are mentioned in the Specifications will remain the Supplier's property.

The ACS Group's Information and Proprietary Knowledge are and will remain the exclusive property of the ACS Group and/or its customers, and the ACS Group or said customers cannot be deemed to grant any

rights whatsoever to the Supplier or any third party.

#### **14.2 Supplier's Intellectual Property Rights**

The Supplier represents and warrants that it is the valid owner of the Intellectual Property Rights it uses for the purpose of its activities and, more specifically, to perform the Contractual Relationship, or that it holds a valid licence to exploit and/or use said rights. The Supplier will have sole responsibility for the payment of any fees or royalties that may be owed in connection with any such licence.

In exchange for the payment referred to in Article 4 above, the Supplier grants ACS a worldwide license to use those of its Intellectual Property Rights that are needed to build or assemble the Products or fit them in the products of ACS or its customer. The license is not exclusive, and is transferable and irrevocable.

#### **14.3 Use of the Parties' Proprietary Knowledge**

Each party will disclose to the other party the Proprietary Knowledge it considers necessary for fulfilment of the Order, on the understanding that no other rights will be granted to the recipient party except for this restricted right of use.

Accordingly, each party undertakes not to use in any way, publish, broadcast or exploit, either directly or through the intermediary of a third party, the Proprietary Knowledge disclosed to it by the other party, without the other party's prior, written authorisation.

#### **14.4 Third Parties' Intellectual Property Rights**

The Supplier must obtain prior, written authorisation from ACS before using any Intellectual Property Rights belonging to a third party in order to fulfil an Order.

The Supplier undertakes to defend and hold the ACS Group harmless against the consequences of any action brought by a third party for infringement of its Intellectual Property Rights, and to bear the related costs. In particular, in the event action is brought by a third party seeking to prohibit, restrict or modify the use, marketing or sale of the Products, the Supplier will be solely liable for any adverse consequences of the action, including any damage to the ACS Group's brand image. The Supplier will compensate the ACS Group in full for any loss sustained, including loss resulting from the non-performance or partial performance of the contract between ACS France SAS and/or its Subsidiaries and their customers, and also including compensation owing to said customers and the extra costs incurred as a result of any necessary modifications to the Products. In addition, ACS will be entitled to terminate the Contractual Relationship in accordance with Article 16 below.

If appropriate, the Supplier must modify the infringing products or obtain a licence on behalf of the ACS Group to exploit and/or use the relevant Intellectual Property Rights, at the Supplier's expense and at no extra cost.

#### **14.5 Termination**

In the event of the termination of the Contractual Relationship, irrespective of the reason, the Supplier authorises the ACS Group to finalise the Products or have them finalised and to carry out maintenance work on them or arrange for maintenance work, notwithstanding any Intellectual Property Rights it may claim to hold, and it agrees not to raise such rights against the ACS Group or any third party contracted by it in this connection. The Supplier further undertakes to provide all plans, technical documents and know-how relating to the Products, including the requisite Proprietary Knowledge, on request.

#### **14.6 Ownership of Results**

The parties agree that the Results will be the sole property of ACS. Accordingly, the Supplier assigns to ACS on an exclusive basis all the Intellectual Property Rights it may hold over the Results, for the whole world, for the entire statutory protection period. It is stipulated for all useful purposes that the assigned rights will include, in particular, the right to reproduce the Results or have them reproduced using any means or processes, on any currently existing or future, known or unknown medium or materials, the right to translate the Results or have them translated, the right to launch, distribute, market and disclose the Results, for purposes relating to its own activities or for the benefit of any third party, for any reason whatsoever, the right to assign all or part of the assigned rights and, in particular, to enter into any contract with any third party for their reproduction, distribution, broadcast, marketing or production in any form whatsoever, using any medium or means whatsoever, for valuable consideration or free of charge.

The parties have agreed that the price for the assignment of said rights is included, on an all-inclusive and final basis, in the sale price for the Products as stipulated in Article 4 above, and that the Supplier will not be entitled to claim any further payment on any ground whatsoever.

Accordingly, the Supplier assigns to ACS on an exclusive basis the right to register in its own name any industrial property deeds that might protect the Results, including in particular applications for patents, utility models (*certificat d'utilité*), special protection certificates and applications to register a drawing, model, trademark or domain name, whether such applications are French, European or international.

In the event ACS waives ownership of any Results in favour of the Supplier, the Supplier must grant it a license to use the Results for its own purposes, at no cost.

## 15 - CONFIDENTIALITY

Information is strictly confidential.

In view thereof, the Information may only be used by the Supplier in order to fulfil the Order, and the Supplier undertakes not to disclose in any form whatsoever all or any part of the Information to any person whomsoever, directly or indirectly. This obligation will continue to apply for ten years from the date of completion of the Order or, for Open Orders, from the date of the last delivery. The Supplier will guarantee, within the meaning of Article 1120 of the French Civil Code, compliance with the foregoing confidentiality undertaking by its directors, employees, agents, corporate officers or duly authorised subcontractors.

## 16 – SUSPENSION - TERMINATION

If an order is suspended by a customer of the ACS Group, irrespective of the reason, ACS may suspend supplies of a Product covered by an Open Order.

If an order is brought to an end or cancelled by a customer of the ACS Group, irrespective of the reason (including because the vehicle or spare part is no longer being produced), the Contractual Relationship will be terminated.

ACS undertakes to promptly inform the Supplier upon receipt of notice of the suspension, end or cancellation of an order by its customer. Suspension or termination of the Contractual Relationship will be effective on expiry of a three (3) month notice period from the date of the notice sent to the Supplier. The notice period may be reduced by express agreement of the parties or in the event of an emergency. During the notice period Calls for Delivery must be fulfilled in accordance with the Contractual Documents in effect at the time of the suspension or termination. Suspension or termination of the Contractual Relationship will not entitle the Supplier to any compensation on any grounds whatsoever.

In the event of any default by the Supplier under the Contractual Documents, including in particular any late delivery, Defect or unauthorised modifications, ACS will be entitled to terminate the Contractual Relationship *ipso jure* if its formal notice to cure the default goes unheeded for eight (8) days, without prejudice to any damages ACS may claim. Termination will be effective on the date stipulated by ACS in the letter of termination.

If ACS arranges for a third party to complete an Order following termination in accordance with this article or in the event insolvency proceedings are started against the Supplier, the Supplier will be required to pay the cost of the third party's work, without prejudice to any damages ACS may claim. The cost may be offset against any sums owed to the Supplier by ACS for any reason whatsoever.

## 17 - FORCE MAJEURE EVENTS

Neither party will be liable to the other for any failure to perform its contractual obligations if this is due to a Force Majeure Event.

The party claiming a Force Majeure Event must promptly inform the other party. The parties will meet as soon as possible in order to decide on the action to be taken to protect, to the extent possible, their respective interests and to minimise the financial consequences of the Force Majeure Event.

If the flow of supplies to ACS is interrupted due to a Force Majeure Event, ACS may take any necessary measures, including obtaining supplies from another supplier, without this entitling the Supplier to any compensation.

If the Force Majeure Event lasts more than fifteen (15) days, all Orders in progress will be cancelled by the first party to act, and neither party may claim damages. Cancellation will be effective from the date the letter giving notice of cancellation, sent by recorded delivery (signed for), is first presented for delivery.

## 18 - REGULATIONS

The Supplier must comply with all applicable laws, regulations and standards concerning safety, the environment, quality, labelling, packaging and employment. It represents that it is certified ISO 9001 or higher or has obtained any other certification required by ACS. It certifies that it has taken the necessary measures to comply with the European regulations on the treatment of end-of life vehicles, prohibited substances and recycling (Directive 2000/53/EC and any related regulations), and those concerning the registration, evaluation and authorisation and restriction of chemicals (REACH, EC regulation no. 1907/2006 of 18 December 2006), and that it has put in place measures to protect the environment and improve working conditions, in line with the process for obtaining ISO 14001 and OHSAS 18001 certification.

The Supplier also certifies that the personnel it uses in France to fulfil the Order is duly and properly employed pursuant to Articles L.3243.1, L.3243.2, L.3243.4, L.1221-13, L.1221.15 and L.1221.10 of the French Employment Code, and in the event ACS authorises it to subcontract, the Supplier acknowledges that it is fully aware that the law prohibits subcontracts with any individual or legal entity who does not comply with Articles L.8221.3 and L.8221-5 of the French Employment Code.

The Supplier must provide ACS with a solemn declaration that it complies with these provisions, on request.

The Supplier must also comply with the internal rules and regulations that apply in any ACS Group establishment in which it is required to work and, more generally, all the applicable laws on health and safety and working conditions.

The Supplier will be liable for any loss or damage caused to ACS Group property by itself, its directors, employees, corporate officers, agents, co-contractors or subcontractors, and will compensate the ACS Group therefor.

## 19 – APPLICABLE LAW / JURISDICTION

The Contractual Relationship is governed by French law. The parties expressly exclude application of the Vienna Convention on the International Sale of Goods to the Contractual Relationship. In the event of a dispute that cannot be settled amicably, the Paris Commercial Court (*Tribunal de Commerce*) will have sole jurisdiction, even in the event of an incidental claim, third-party guarantee or multiple defendants.

## 20 – MISCELLANEOUS

The failure of either party to assert any of its rights under the Contractual Documents shall not constitute a waiver of any such rights. Any waiver by either party of any of its rights under the Contractual Documents shall not be construed as a waiver of any other rights under the Contractual Documents.

Any waiver by either party of any of its rights under the Contractual Documents shall be notified in writing to the other party.

If any term or other provision of the Contractual Documents is invalid, illegal or incapable of being enforced, all other terms and provisions of the Contractual Documents shall nevertheless remain in full force and effect as if such term or provision had never existed, for so long as the substance of the Contractual Relationship is not affected.

In addition, the parties agree to replace, to the extent possible, any term or provision held invalid by a valid term or provision having the same effect and corresponding, to the extent possible, to the parties' original intent.