

## TERMS AND CONDITIONS FOR PURCHASE OF PRODUCTION MATERIALS

### 1. DEFINITIONS

**“Terms”** means these Terms and Conditions for Purchase of Production Materials

**“Supplier”** means the party to whom the Purchase Order is addressed or means the supplier signing the Supply Agreement.

**“Buyer”** means the KYOCERA AVX Components Group (hereinafter “KAVX Group”) entity which issues a Purchase Order or on whose behalf a Purchase Order is issued or means the buyer signing the Supply Agreement or issuing the Order.

**“Goods”** means all production materials, components and parts specified in the Purchase Order for use in Buyer’s series production and to be incorporated in Buyer’s and Buyer’s customer’s products, which are destined to be used worldwide for instance in the automotive industry. Software supplied by the Supplier shall be deemed to be part of the Goods. Purchase of non-production materials, including Tooling and services is not covered by these Terms.

**“Order”** means any order for the purchase of Goods issued by Buyer to Supplier. Purchase Orders may be **“Closed Order”** if referring to volumes and delivery dates set forth in the Order itself, or **“Framework Agreement”** if referring to ongoing supplies of the Goods for which volumes and delivery schedules are not set forth in the Order, but within the Delivery Schedule.

**“Delivery Schedule”** means any instruction issued by Buyer to Supplier specifying the required delivery quantities, place, dates and (if relevant) time of delivery of Goods.

**“Supply Agreement”** means any contract formed by Supplier’s acceptance of an Order or any contract mutually agreed by Supplier and Buyer for the purchase of Goods.

**“Tooling”** means production equipment, including, but not limited to forging dies, measuring and testing equipment (e.g. gauges), matrices, models, samples, tools, devices, drawings and similar items required for the production and examination of Goods.

**“Working Days”** means any day other than a day treated as a weekend or public holiday.

**“In writing” or “written”** means a document or any information transmitted in text form, including email or any digital data transmitted by means of EDI or other systems.

**“EDI”** means Electronic Data Interchange, i.e. the transmission of data via electronic communication links between the parties or other machine-readable data media.

**Intellectual Property Rights** means patents, design rights, copyrights, trademarks and model designations (whether registered or not and applications for any of the foregoing), know-how, and rights of a like nature, throughout the world.

### 2. ORDERS AND FORMING OF SUPPLY AGREEMENT

2.1 These Terms apply to all Orders issued by the Buyer to the Supplier.

2.2 An Order constitutes an offer by the Buyer to purchase the Goods.

2.3 An Order shall be deemed to be accepted on the earlier of:

- (1) the Supplier issuing a written acceptance of the Order; or
- (2) the Supplier doing any act consistent with fulfilling the Order;

at which point the Order shall be binding and the Supply Agreement is deemed concluded on the Supplier and the Buyer.

2.4 Unless the Order expressly contains a binding period the Buyer shall be entitled but not obliged, to revoke such Order without incurring any liability to the Supplier, in the event that the Supplier does not forward a written acceptance or does not start performance in relation to an Order within ten (10) working days after the Date of the Order.

2.5 The acceptance of an Order by the Supplier is expressly limited to the terms of such Order, to these Terms as well as to an existing individual Supply Agreement, if such has been agreed between the Buyer and Supplier.

2.6 The Order incorporating these Terms applies to the exclusion of any other terms that the Supplier seeks to impose or incorporate. Including, without limitation, any terms the Supplier may supply with, or reference to in any quotation or Order acknowledgement. Unless agreed by the parties in writing and signed by the authorised representatives of the Buyer any amendments, additions and collateral agreements to these Terms and the Order are expressly excluded and shall not form part of any Supply Agreement.

2.7 A verbal Order of any kind shall only be treated as an Order placing obligations on the Buyer where it is followed up with a written purchase order or call off notice from the Buyer.

2.8 Unless otherwise stated in the Order, the Buyer shall have the right to reschedule, vary or cancel any Orders or Delivery Schedules at any point without liability. Save the case a cancelation has been made within 30 days before delivery, the Buyer will

reimburse the Supplier for the costs of finished Goods reasonably produced and raw materials reasonably ordered up to that time, provided that the Supplier can prove that he cannot cancel or otherwise use or distribute such Goods and materials.

### 3. CHANGES

3.1 The Buyer may request an alteration to the specification of the Goods at any point. On such request the Supplier shall promptly and within five (5) Working Days at the site of Supplier notify the Buyer whether or not such alteration will result in additional costs to the Supplier or delay in supply. The Supplier shall use all reasonable endeavours to mitigate any such costs rises / delays and shall provide all such information as may be requested by the Buyer to ascertain the extent of such cost rises or any potential delays. Where the alteration:

- (1) does not result in any cost increase or delay the Supplier shall immediately make the alteration; or
- (2) does result in additional costs or delays, the Supplier shall not implement the alteration unless it has first received the Buyer's written agreement to the notified cost increase / delay.

3.2 If the alteration results in a reduction to the Supplier's costs or enables the Supplier to deliver the Goods earlier than the agreed delivery date, the Supplier shall notify the Buyer of the same and shall reduce the price of the Goods by a percentage equal to the percentage by which the Supplier's costs are reduced, and with the Buyer's consent bring forward the delivery date.

### 4. PRICE AND PAYMENT

4.1 The prices for the Goods shall be the price stated on the applicable Order. If no price is stated the price shall be the price agreed by the Parties in a pricing agreement, or if no agreement is in place, the price last agreed by the Buyer from the Supplier's quote.

4.2 The price of the Goods is exclusive of amounts in respect of value added tax or any sales tax (VAT), but includes the costs of packaging, and save where agreed to the contrary in writing, insurance and carriage of the Goods (including customs duties). No extra charges shall be effective unless agreed in writing and signed by the Buyer.

4.3 The Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.4 The Supplier may invoice the Buyer for the Goods on or at any time after the completion of delivery.

4.5 The Buyer shall pay correctly rendered written invoices within the payment period agreed by the Parties. If no payment period has been agreed, the Buyer shall pay within thirty (30) days after receipt of the correctly rendered written invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

4.6 The Buyer expressly reserves the right to set off the liabilities of the Supplier to the Buyer against the liability of the Buyer. The Supplier specifically agrees that all sums owed to Buyer are related to the amounts to be paid under these Terms.

### 5. DELIVERY

5.1 Unless otherwise specified in the Order, the Delivery Schedule, or in any individual Supply Agreement, the Supplier shall deliver the Goods:

- (1) to the Buyer's premises specified on the Order, or such other location as is set out in the Order, or as instructed by the Buyer in writing prior to the delivery ("**Delivery Location**");
- (2) during the Buyer's normal business hours, or as instructed by the Buyer; and
- (3) Delivered Duty Paid (DDP) pursuant to the then latest set of INCOTERMS, unless otherwise agreed and stipulated on the Supply Agreement.

5.2 The Supplier shall deliver the Goods on the date specified in the Closed Order or in the Delivery Schedule ("**Delivery Date**").

5.3 The Delivery Schedules will be issued and periodically updated by the Buyer. The Supplier shall be bound to comply with a Delivery Schedule or an amendment thereto issued by Buyer, unless the Supplier notifies Buyer of his reasonable objection thereto in writing within the following periods:

- (1) one (1) working day after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect within ten (10) working days (inclusive) after the receipt of the Delivery Schedule or amendment thereto.
- (2) three (3) working days after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect eleven (11) working days to three (3) months (inclusive) after the receipt of the Delivery Schedule or amendment thereto.
- (3) ten (10) working days after receipt of the Delivery Schedule or amendment thereto, if the requirements or amendments therein are to come into effect more than three (3) months after the receipt of the Delivery Schedule or amendment thereto.

Supplier's objection is considered reasonable, if the quantities ordered by the Buyer exceed the Supplier's capacities, flexibility rates or lead times agreed between Buyer and the Supplier.

5.4 Supplier acknowledges that Delivery Dates and quantities are of the essence. The receipt of the Goods at the Delivery Location shall be authoritative for compliance with the Delivery Date. Buyer may reject and/or return at Supplier's expense any delivery of Goods or part thereof received before or after the Delivery Date or in excess of the quantity specified in the Purchase Order and/or Delivery Schedule. The Supplier shall immediately inform the Buyer of any expected delay in the delivery of any Goods.

5.5 Deliveries shall contain the correct quantities of Goods. Without prejudice to this obligation if the Supplier:

- (1) delivers less Goods than the quantity ordered, the Buyer may reject the delivery; or
- (2) delivers more Goods than the quantity ordered, the Buyer may at its discretion reject the delivery or the quantities to the excess

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Buyer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods. In case the Buyer accepts delivery before the Delivery Date, the payment term continues to apply from the Delivery Date. Additional costs incurred by the Buyer for under delivery can be recovered from the Supplier (including, without limitation, costs associated with small batch size and labour inefficiency). The Supplier shall not deliver the Goods in instalments or early without Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they shall be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clauses 9 below.

5.6 The Supplier shall ensure that:

- (1) the Goods are – by observing the Logistics Handbook – properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- (2) each delivery of the Goods shall be accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).

5.7 A delivery note in duplicate shall be enclosed with the consignment, specifying all of the identification numbers stipulated in the order, particularly the Order number, part number, lot number, item number, date code, customs tariff number (where applicable), etc. to the extent possible. The delivery note should be inserted in a suitable delivery note pocket on the outer carton. The Supplier shall be liable for any consequences arising from documents that are incorrectly or incompletely filled out or any damage arising from improper transport packaging. Each packing unit shall - under observance of the Logistics Handbook - be labelled with VDA-label which contains in the form of barcode 128 or 139 material- & PO-number of the Buyer as well as quantity and Lot-/Batch number and every shipment have to be labelled with a VDA-master label.

5.8 As the Supplier is a quality-certified Supplier (according to norms ISO 9001 and/ or IATF 16949) (see below Section 8), the Buyer shall inspect the incoming Goods only in respect of externally visible damages, the quantity of containers according to the loading list and in regard of deviations in identity of the delivered goods from the Goods specified in the shipping documents. The Buyer is under no obligation to conduct any further inspection of incoming Goods and will notify any deficiency of Goods to the Supplier within five (5) Working Days at the site of Buyer once the deficiency has been discovered by the Buyer in the ordinary course of its business. Such limitation of the inspection is subject to the condition that Buyer carries out device-specific tests accompanying production in compliance with the requirements of the IATF norm-conform quality management system in order to ensure the earliest possible detection of defects in its production.

5.9 If a defect is detected while incoming inspection, the Buyer shall be entitled to inspect the entire delivery at the Supplier's expense or to return the delivery to the Supplier at the Supplier's expense. Any payments of the purchase price that may have been made before the defect was detected will not constitute recognition that the Goods are free from defects and deficiencies.

The Supplier shall promptly notify the Buyer in writing if any ordered Goods are deemed hazardous under the laws, rules or regulations of any applicable governmental or regulatory authority and will mark such hazardous materials accordingly. In the event that Goods are chemical substances, preparations or materials, Supplier shall provide Buyer with "Safety Data Sheets" for these Goods.

## 6. TITLE AND RISK

Risk in the Goods shall pass to the Buyer on completion of delivery in accordance with the agreed delivery term. Title shall pass on payment for the Goods, save that the Buyer shall be permitted to process the Goods in the ordinary course of its business; "Processing" shall include mixing, combining or remodelling of the delivered Goods in the sense of Sections 947-950 German Civil Code. The Buyer is considered as manufacturer and acquires ownership of the resulting product, whereby, in respect of any capital items used in the manufacturing process for the Goods, which the Buyer is paying for in instalments, title for such items shall pass to the Buyer once the Buyer has paid instalments equal to, or greater than, fifty per cent (50%) of the total payable for the item (without prejudice to the Buyer's obligation to pay the remaining instalments).

## 7. WARRANTY

7.1 The Supplier warrants that the Goods shall:

- (1) correspond with (i) their description, (ii) any applicable specification (being any specification, drawings, technical standards, manufacturing processes and other documents) as set out in the Order or if no specification is set out in the Order, the latest specification provided by the Buyer to the Supplier in respect of the Goods, or in the absence of such specification the latest specification provided by the Supplier to the Buyer for the Goods, and (iii) any samples provided to the Buyer;
- (2) be of satisfactory quality and: (i) fit for any purpose to which they may reasonably be put; and (ii) any specific purpose made known to the Supplier by the Buyer expressly or by implication;
- (3) be free from defects in design, material and workmanship;
- (4) comply with the terms of any applicable Quality Assurance Agreement or Guidelines, and
- (5) be supplied in accordance with any: (i) Buyer's logistics handbook; or (ii) the Buyer's specific requirements as issued by the Buyer at any point.

7.2 The Supplier's actions in manufacturing and supplying the Goods shall comply with the Supply Agreement and all applicable legal, statutory and regulatory requirements, in force from time to time, including, without limitation, those relating to export control, the environment, anti-bribery, the manufacture, labelling, packaging, storage, handling and delivery of the Goods (including without limitation those in place at: (i) the country of manufacture; (ii) the country from which the Goods are supplied; (iii) the country to which the Goods are supplied; and (iv) any other countries agreed in advance by the Parties)).

7.3 Unless otherwise agreed in writing and subject to 7.4, the warranty claims arising out of liability for defects in quality (warranty claims) for all Goods shall be time-barred as follows:

- (1) if the claim originates in a claim of an end-customer (of a product which incorporates the Good), and such end-customer-claim is raised in the territory of USA, Canada or Puerto Rico upon 60 months as of the date of Suppliers' delivery of the respective Good to Buyer;
- (2) if the claim originates in a claim of an end-customer raised in the rest of the world, upon 38 months as of the date of Buyer's delivery of the final product into which the respective Good has been incorporated to its own customer, but not later than 48 months as of the date of Supplier's delivery of the respective incorporated Good to the Buyer.

7.4 If a shorter warranty period has been contractually agreed between Buyer and its customers, such shorter period shall apply towards the Supplier, supplemented by a handling period of 2 months. If, in the case of Goods relevant to exhaust gas, emissions or safety, the liability periods applicable under mandatory statutory or other mandatory provisions exceed the periods specified in Section 7.3, these shall replace the periods specified in Section 7.3.

7.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Supply Agreement.

7.6 The Buyer shall have the right to inspect, with its advisors and customers, the Supplier's site and those of the Supplier's approved subcontractors, at any time after a timely notification period, to monitor manufacturing processes and compliance with the terms of the Supply Agreement. The Supplier shall provide and procure all reasonable assistance to facilitate any such inspection.

7.7 If at any time the Buyer considers that the Goods do not conform or are unlikely to comply with the terms of the Supply Agreement and in particular with the Supplier's undertakings at clause 7.1, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action, as is necessary to ensure compliance, including any such action as may be required by the Buyer's customers, which may include without limitation the preparation of 8D reports or delivery of replacement Goods. The Buyer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions. The Supplier shall bear all its costs, and the Buyer's costs including the Buyer's customer's costs, relating to inspection and remedial action, which may include, without limitation, rectifying the defects itself or through a third party, or acquiring replacement Goods.

7.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Supply Agreement.

7.9 If the Goods are subject to any export restrictions or other restrictions on their use, the Supplier shall notify the Buyer of this as soon as reasonably possible and in any event within five (5) Working Days at the site of Buyer of receiving the Order. The Buyer may cancel any Orders, without liability to the Buyer, due to any restrictions which it had not previously been advised of in writing.

## **8. QUALITY AND MANUFACTURING REQUIREMENTS**

8.1 The Supplier undertakes to manufacture the ordered Goods in compliance with the standards of the automotive industry (in particular ISO 9001 and/or IATF 16949, unless the parties have agreed otherwise) and to comply with the Buyer Quality Guideline of the Buyer (or Quality Agreement, if any) and applicable at that time. Notwithstanding any additional requirements in any such Buyer Quality Guideline, the Supplier undertakes to establish and maintain an appropriate quality assurance system and procedure and to provide Buyer with evidence thereof upon request.

8.2 Where Goods are manufactured to a specified quality process or pursuant to any quality qualification, in particular but without limitation any required by the Buyer's customers, the Supplier shall not in any way vary its quality or manufacturing process for the Goods, unless it has first obtained the written approval of the Buyer.

8.3 The Supplier shall represent and warrant that all of the goods, machines or plants it has delivered or all of the services it has provided meet the latest product quality standards as well as the latest European or German norms. The Supplier shall immediately point out possible process modifications, improvements and further developments of the goods to be delivered or the service to be provided. Any material technical or other differences between the old and the new design of the goods to be delivered shall be emphasized in writing. Any differences in the goods to be delivered or services to be provided deviating from the Buyer's order shall be subject to the Buyer's prior written consent.

8.4 The goods to be delivered and services to be provided shall be examined by the Supplier by subjecting them to the tests, test agents and testing methods (machines and plants: specifications) stipulated by the Buyer and the respective test documentation prepared. The test documentation shall be kept on file for at least 15 years after the invoice date and presented to the Buyer upon request. The Supplier's sub-suppliers shall be obligated to the same extent.

8.5 The Buyer is an affiliate of the US based KAVX Group. The Supplier shall ensure that at all times it complies with the provisions of KAVX's policies as in regard to Social Accountability, Environment and other business ethic rules and principles, or any successor or additional policy, as in effect from time to time. Such policies can be read online at <https://www.kyocera-avx.com/about/environmental-compliance/> as well as <https://www.kyocera-avx.com/docs/corporate/ConflictMinerals.pdf> or obtained upon request from the Buyer. The Supplier shall also adhere to the requirements of the Norm - SA8000.

## **9. REMEDIES**

9.1 If the Goods are not delivered on the Delivery Date (time is of the essence), in the quantity or quality complying with the terms of the Supply Agreement, then, without limiting any of its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (1) to terminate the Supply Agreement in whole or in part without liability to the Supplier;
- (2) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's risk and expense;

- (3) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (4) in the case the non-conforming Goods are repeatedly supplied, to rescind the contract also with respect to the Goods not yet supplied and refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (5) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods from a third party; and
- (6) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry out its obligations under the Supply Agreement, and the Supplier shall indemnify the Buyer in respect of the same.

9.2 These terms shall apply to any repaired or replacement Goods supplied by the Supplier.

## 10. SUPPLIER'S LIABILITY AND INDEMNIFICATION FOR DAMAGES

10.1 The Supplier shall keep the Buyer, its affiliates and customers, indemnified and free against all liabilities, costs, expenses, damages and losses for which the Supplier is responsible, according to its share of the fault and the type and extent of any mutual causation contributions within the scope of the applicable law. This includes, but is not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs, all other professional costs and expenses), including any arising from any product recall, suffered or incurred as a result of or in connection with:

- (1) any claim made for actual infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods;
- (2) any claim made by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods; and
- (3) any breach, negligent performance, failure to comply with the contractual obligations or delay in performance of any of Supplier's obligations under the Supply Agreement by the Supplier, its employees, agents or approved subcontractors.

## 11. INSURANCE

As at the date of acceptance of the Order and for a period of six (6) years after the date on which the last Goods were supplied, the Supplier shall maintain in force, with an A-Rated insurance company, insurance to cover the liabilities that may arise under or in connection with the Supply Agreement, including, without limitation, product liability, public liability insurance and (motor vehicle) recall damages insurance. The sum insured must be at least amount to EUR 10.000.000 (in words: ten million Euro). In respect of each of the above mentioned insurance policies, the Supplier shall, on the Buyer's request, provide the Buyer with a copy of the insurance certificate giving details of cover and a receipt for the payment of the current year's premium.

The insurance coverage for the (motor vehicle) damages to be documented by the Supplier shall include inter alia (i) the costs of inspection and identification of the defective Good, (ii) the costs of the replacement of such defective Goods regardless whether such defective good is essential for the proper functioning of the final product, (iii) including the costs of the replacement of Buyer's products in which the Good delivered by the Supplier has been built in. The coverage must be provided regardless on whether the Supplier is performing directly or whether it has used a sub-supplier for the performance. The Supplier undertakes to ensure in its contract with the sub-supplier that the Buyer may, at his request, directly claim damages from the sub-supplier if the defect is attributable to a sub-supplier. The Supplier shall prove to the Buyer that such assignment of rights against the sub-supplier has taken place.

## 12. CONFIDENTIALITY

12.1 Pursuant to the Supply Agreement each Party (the **"Disclosing Party"**) may disclose or make available to the other Party (the **"Receiving Party"**) confidential and/or proprietary information related to its products, technology, research plans, business affairs and/or finances related to the provision of the Goods under the Supply Agreement (the **"Confidential Information"**).

12.2 The parties may disclose or make available the Confidential Information to the other Party in any form of communication. Any Confidential Information disclosed orally shall be summarized in writing and marked as Confidential and provided to the Receiving Party within 30 days of the initial disclosure.

12.3 Neither Party shall be obliged to maintain in confidence Confidential Information which:

- (1) was lawfully known by the Receiving Party, absent a then-existing duty to keep it confidential, prior to being received from the Disclosing Party;

- (2) is subsequently disclosed to the Receiving Party without restriction by a third party who, to the best of the Receiving Party's knowledge, has the right to disclose the Confidential Information to the Receiving Party without any legal or contractual restriction or fiduciary duty to the Disclosing Party;
- (3) is or, without the fault of the Receiving Party, becomes publicly known; or
- (4) is developed by the Receiving Party independently without benefit of, use of, or reference to the Disclosing Party's Confidential Information;
- (5) the Disclosing Party expressly authorizes Receiving Party to disclose without restriction.

12.4 Each Party undertakes that, except as expressly permitted pursuant to the Supply Agreement, it shall not, and shall ensure that its affiliates do not, disclose or permit to be disclosed to any third party, or use or permit the use for any purpose other than in performance of its obligations under the Supply Agreement, any of the other Party's Confidential Information, save where such disclosure is required to provide Confidential Information to any court, government/regulatory agency, or other third party pursuant to a court order, subpoena (i.e. a procedural device which exists in common law jurisdictions including notably the USA), or other process law, in which case the Receiving Party shall (i) promptly, to the extent permitted by law, notify the Disclosing Party; (ii) provide to the Disclosing Party all reasonable assistance to obtain confidentiality undertakings; and (iii) only disclose the minimum amount of Confidential Information required to comply.

12.5 The disclosure to affiliates is limited to those which a) are affiliated with the Receiving Party within the meaning of Sections 15 et seq. German Stock Corporation Act (except for Kyocera Corporation and its wholly-owned subsidiaries), b) are not competitors to the Disclosing Party with regard to the purchase of the Goods and c) have in turn been obliged to maintain confidentiality. The Parties shall only grant access to Confidential Information to consultants (third party professional legal, financial, and technical advisors) who are bound by professional secrecy or who have previously been subject to obligations of confidentiality equivalent to the obligations under this clause 12. Furthermore, the Parties will only disclose Confidential Information to those employees who need to know it in order to carry out the Supply Agreement and will oblige these employees to maintain confidentiality to the extent permitted by employment law for the period after their departure.

12.6 All Confidential Information received by either Party under the Supply Agreement is and shall remain the property of the Disclosing Party at all times. No license to, or ownership interest in, any trademark, copyright, patent, trade secret, or other intellectual property right of Disclosing Party is granted to the Receiving Party by virtue of the disclosure of Confidential Information.

12.7 Upon written demand from the Disclosing Party, the Receiving Party will return the Confidential Information and any copies of it to the Disclosing Party, or at the Disclosing Party's request, destroy all such Confidential Information and provide the Disclosing Party with written confirmation of such destruction. In either event the Receiving Party shall expunge or destroy all Confidential Information from any computer, word processor or other device containing Confidential Information and destroy all notes, analyses, memoranda containing any part of the Confidential Information, save that the Receiving Party shall not be required to destroy, delete or modify any backup tapes or other media pursuant to automated archival processes in the ordinary course of business, provided that, employees are precluded from accessing such information in the ordinary course of business prior to destruction. The Receiving Party shall additionally be permitted to retain one (1) copy of the Confidential Information in the possession of its legal department to ensure compliance with the terms of the Supply Agreement and applicable law. Copies of any Confidential Information archived or retained pursuant to this clause shall only be used, including at any point following the termination of the Supply Agreement, for the purposes of ensuring compliance with the terms of the Supply Agreement or applicable law.

12.8 The provisions of this clause 12 shall survive and continue in effect indefinitely with respect to any Confidential Information expressly identified to the Recipient, prior to its disclosure, as a "trade secret" and for a period of three (3) years for all other information from the date on which the Confidential Information was first disclosed. The Receiving Party shall, in any event, have the option of refusing to take receipt of information constituting a trade secret.

12.9 Where the Parties have entered into a non-disclosure agreement or other confidentiality agreement ("**Confidentiality Agreement**"), the provisions of the Confidentiality Agreement shall take precedence over the confidentiality terms of the Supply Agreement to the extent they provide greater protection for a Party's Confidential Information.

### **13. END OF LIFE, DEADLINES, CHANGE OF CIRCUMSTANCES AND OBLIGATION OF CONTINUED SUPPLY**

13.1 The Supplier shall provide the Buyer as soon as possible, but with at least one (1) year's notice, if it becomes aware of circumstances which could jeopardise the production of any purchased Goods of which it has supplied specimens to the Buyer at any time within the last ten (10) years. Within such, at least, one (1) year notice period the Supplier shall meet all Orders for Goods and shall provide all reasonable co-operation requested by the Buyer, and all information requested by the Buyer, to enable the Buyer to procure or establish an alternate source of supply for such Goods. At the Buyer's request the Supplier shall

also: (i) offer to sell to the Buyer any tooling or equipment specifically purchased or modified for the supply of such Goods, at the price paid by the Supplier for such tooling or equipment less a reasonable deduction for any degradation and / or depreciation to the tooling or equipment; and (ii) offer to licence to the Buyer on a worldwide, non-exclusive basis, with the right to grant sub-licences, all technical information and intellectual property rights required to manufacture, sell and use the Goods. The licence terms shall be such commercially reasonable terms as would be agreed by a willing licensee and licensor.

### 13.2 Change of basic circumstances

a) **Contract to be observed:** Where the performance of a contract becomes more onerous for the Supplier, it is nevertheless bound to perform its obligations subject to the following provisions.

b) **Effects of change of basic circumstances:** In case of change of basic circumstances as defined in lit. c) hereunder, the Supplier is entitled to request renegotiations. The request shall be made without undue delay following the event, on which it is based. It shall indicate the grounds on which it is based. The request for a renegotiation does not in itself entitle the Supplier to withhold performance. In that situation, the Buyer is obliged to cooperate in good faith in order to reach an adequate adaptation of contract.

c) **Definition of change of basic circumstances:** There is a change of basic circumstances and thereby hardship where

- *firstly* the occurrence of one or more events that fundamentally alter the equilibrium of the contract (“**Events**”) (for example because the cost of the Supplier’s performance has increased, and
- *secondly*, the events fulfill the following conditions:
  - (1) they are beyond the control of the Supplier;
  - (2) the Events occur or become known to the Supplier after the conclusion of the contract
  - (3) the Events could not reasonably have been taken into account by the Supplier at the time of the conclusion of the contract;
  - (4) the risk of the Events was not contractually assumed by the Supplier.

13.3 The mere intention to optimise production and/or production costs does not in itself constitute a change of basic circumstances or reason to terminate the contract.

## 14. TERMINATION

14.1 Either Party may terminate the Supply Agreement immediately if the other Party commits a material breach of the Supply Agreement and, if such a breach is remediable, fails to remedy that breach within 30 days of that Party being notified in writing of the breach by, or on behalf of, the non-defaulting Party. In addition, either Party may terminate a Closed Order immediately if the other Party is subject to an Insolvency Event (Insolvency Event means: failing to pay debts as they fall due; entering liquidation or administration or commencing negotiations with any creditors to reschedule its debts, or undergoing any analogous occurrence in any jurisdiction; or threatening to do any of these things in any jurisdiction).

14.2 The Buyer shall have the right to terminate the Supply Agreement (including any and all Orders the Buyer may have with the Supplier), without liability, in the event that the Buyer’s customer cancels its agreement with the Buyer pursuant to which the Goods have been ordered by the Buyer, or on a change of Control of the Supplier. For the purposes of this clause “**Control**” means ownership or control, directly or indirectly, of more than 50% of the voting shares or any other comparable equity or ownership interests of the other corporation or entity, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation or other entity.

14.3 The fulfilment or for any reason, termination, of the Supply Agreement shall not affect any rights or obligations of the Parties arising out of the Supply Agreement which have accrued prior to the date of termination, including, without limitation in respect of the Buyer’s Materials and the Buyer’s Confidential Information under clause 12 and the right to recover damages against the other Party for any breach of the Supply Agreement.

## 15. NOTICES

15.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to the Supply Agreement or otherwise to the party giving the notice.

15.2 Orders, Delivery Schedules and Order Acceptances can be transmitted by electronic means (EDI, WebEDI or e-mail) or facsimile.

15.3 Any notice shall be deemed to have been duly received:

- (1) if delivered personally or by courier, when left at the address and for the contact referred to in this clause on a Working Day; or
- (2) if sent by pre-paid recorded delivery post or electronically or facsimile at 9.00 am on the second Working Day after posting.

## 16. MISCELLANEOUS

16.1 Independent Contractors. The Parties hereto are independent contractors and nothing contained in the Supply Agreement shall be deemed or construed to create a partnership, joint venture, employment, franchise, agency or fiduciary relationship between the Parties and neither Party shall have the right to bind the other or hold itself out as having such right.

16.2 Assignment/Sub-contracting. The Supplier shall not assign or sub-contract its rights or obligations pursuant to the Supply Agreement without the prior written consent of the Buyer. This restriction of assignment does not apply to mere monetary claims.

16.3 Non-Exclusive. Nothing in the Supply Agreement shall be construed as appointing the Supplier on an exclusive basis and the Buyer shall be under no obligation to place any orders with the Supplier.

16.4 Entire Agreement. The Supply Agreement (as defined in clause 1) constitutes the entire understanding and agreement of the Parties, as per the moment of contract conclusion, with respect to the subject matter hereof and cancels and supersedes all prior agreements, whether verbal or written, between the Parties with respect to the subject matter hereof. Each Party acknowledges that, in entering into the Supply Agreement, it has not relied on, and, to the extent permitted by law, shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Supply Agreement. This clause shall not be interpreted as excluding any liability for fraud. No modification of any provision of the Supply Agreement shall be effective unless made by a duly authorized officer of all of the Parties.

16.5 Severability. If any term of the Supply Agreement is declared invalid or unenforceable by a court or other body of competent jurisdiction, such terms shall be divisible and deleted. To the extent it is declared invalid or unenforceable, the remaining terms of the Supply Agreement shall continue in full force and effect.

16.6 Further Assurance. The Supplier shall do, or procure the doing of, all acts and things, and execute, or procure the execution of, all documents, and provide all information, as may reasonably be required to give full effect to the Supply Agreement and to enable the Buyer to confirm the Supplier's compliance with the terms of the Supply Agreement.

16.7 Precedence. In the event of any conflict between the terms of these Terms and the terms of:

- (1) the Order (including any purchase agreement under which the Order was placed), then the Order shall take precedence; or
- (2) any additional contractual arrangements, including any Buyer Quality Guideline or Quality Agreement, if any, or Logistics Handbook then these Terms shall take precedence.
- (3) Save in either case where specifically agreed to the contrary in writing.

16.8 No Waiver. No delay or failure of any Party in exercising or enforcing any of its rights or remedies under the Supply Agreement shall operate as a waiver of those rights.

16.9 Default interest rate. The Parties agree that in respect of any action by either Party for the late payment of amounts owed, the maximum applicable interest rate on amounts owed shall be such amount as is the lowest interest rate permitted by law.

16.10 Governing Law. For contracts with **Suppliers from Germany** (registered office), the Supply Agreement as well as any and all disputes, claims or litigation arising from or related in any way to the Supply Agreement, including its formation or validity, shall be governed exclusively by the substantive laws of the Federal Republic of Germany. However, the application of Sections 305 to 310 German Civil Code is excluded if that Code applies. For contracts with **Suppliers from other jurisdictions** (registered office), the Supply Agreement as well as any and all disputes, claims or litigation arising from or related in any way to the Supply Agreement, including its formation or validity, shall be governed exclusively by the UNIDROIT Principles of International Commercial Contracts (2016 edition) (available at: <https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>).

16.11 Arbitration. Any and all disputes, claims or litigation arising out of or in relation to the Supply Agreement, including its formation and/or validity, shall be resolved exclusively by arbitration. Up to a value of the claim of 500,000 EUR, the arbitration institution shall appoint a sole arbitrator, unless the parties jointly agree on a sole arbitrator. If the value of the claim exceeds 500,000 EUR during the arbitration (upon decision of the sole arbitrator which is not subject to any recourse), the sole arbitrator shall become the chairperson. In such case, the arbitration institution will give each party the possibility to nominate one co-arbitrator within a short time period. The location of arbitration shall be Hamburg, Germany. The language to be used in the arbitral proceeding shall be English because Buyer is a subsidiary of the US company KAVX. Documents may be submitted in both English and German. Arbitrators must be fluent in both English and German. The chosen rules of arbitration shall be (a) for contracts with **Suppliers from Germany** (registered office): the Rules of Arbitration of the German Arbitration Institute (DIS); (b) for contracts with **Suppliers from other jurisdictions** (registered office): the Rules of Arbitration of the International Chamber of Commerce (ICC), unless the Supplier in writing opts for the application of the DIS Rules of Arbitration upon conclusion of the contract (less expensive in case of dispute). Any arbitration pursuant to this provision shall be governed by the IPBA (“Inter-Pacific Bar Association”) Guidelines on Privilege and Attorney Secrecy in International Arbitration adopted by the IPBA Council resolution of 13 October 2019 (<https://ipba.org/sites/main/media/fck/files/2020/IPBA%20Guidelines.pdf> )

16.12 THE PARTIES FURTHER AGREE THAT EACH AND EVERY TERM OF THESE TERMS HAS BEEN REVIEWED BY EACH PARTY BEFORE PROCEEDING WITH THE TRANSACTION, THAT EACH PARTY HAS NEGOTIATED SUCH TERMS, AND THAT EACH PARTY FREELY AGREES TO EACH TERM AS A JOINTLY NEGOTIATED AGREEMENT WITHOUT ANY DESIGNATION OF EITHER PARTY AS THE SOURCE OF THESE TERMS. THE PARTIES SPECIFICALLY AGREE THAT THESE TERMS DO NOT CONSTITUTE A STANDARD AGREEMENT FOR EITHER PARTY AND THAT EACH PARTY SPECIFICALLY REPRESENTS TO THE OTHER PARTY THAT IT UNDERSTANDS THAT IT IS FREE FROM OPPRESSION AND ACCEPTS THESE TERMS FREELY AND OF ITS OWN CHOICE.

## REVISION STATUS

VERSION:	CHANGES:
Version March 2021	§ 16.11 – claim value changed to 500,000 Euro.
Version July 2021	§ 16.11 – following wording added: “Any arbitration pursuant to this provision shall be governed by the IPBA (“Inter-Pacific Bar Association”) Guidelines on Privilege and Attorney Secrecy in International Arbitration adopted by the IPBA Council resolution of 13 October 2019 ( <a href="https://ipba.org/sites/main/media/fck/files/2020/IPBA%20Guidelines.pdf">https://ipba.org/sites/main/media/fck/files/2020/IPBA%20Guidelines.pdf</a> )”.
Version October 2021	Amendments due to the name change of the AVX Group to KYOCERA AVX Components Group (“KAVX Group”).