



## APPENDIX "B"

FB BE-706-3/C

### BRP-Rotax STANDARD TERMS AND CONDITIONS

July 2016

- ORDER/AGREEMENT.** These terms and conditions are made part of the attached purchase order, Just in Time Delivery Schedule (JIT Delivery Schedule) or supply agreement ("Order") issued by BRP-Rotax GmbH & Co KG/ BRP Queretaro S.A. de C.V (hereinafter "Rotax") to the supplier identified in the Order ("Supplier"), to purchase certain goods, tooling and/or services described in the Order ("Products"). Purchase Orders are typically issued electronically, in exceptional cases by fax, and as agreed are therefore also valid without signature. The Order is binding on the parties when Supplier (1) returns written acceptance, (2) makes any shipment of Products to Rotax, or (3) accepts the Order in any other manner. In the case of a purchase order or release, Supplier shall be deemed to accept the Order unless it notifies Rotax otherwise within three (3) business days of receipt. Supplier shall notify Rotax immediately if it is unable to fulfill any terms of the Order. Target quantities in a blanket order ("BO") are for forecasting purposes only and are not binding on the parties. From time to time, Rotax may issue Forecast Schedules under a BO that commit the parties to specific quantities and delivery dates. The Just In Time Delivery Schedule (<JIT Delivery Schedule>) commits the parties to specific quantities, delivery dates and when requested, time of arrival at Rotax' site. Unless otherwise governed by a Supply Agreement, the terms of the accepted Order shall constitute the entire agreement between the parties ("Agreement"). In the event of a conflict between any of the terms of an Order and these terms and conditions the Order shall control unless otherwise governed by a Supply Agreement. Any additional terms in any proposal, quotation, invoice, acknowledgement or other communication from Supplier are hereby objected to and rejected and are not binding on Rotax.
- PRICE.** The total price of the Products shall be as stated in the Order and unless otherwise specified therein, the price for Products shall be firm fixed. No additional charges or assessments of any kind (including, without limitation, freight/shipping charges, surcharges or taxes) will be allowed unless such charges are clearly specified in the Order. Supplier represents that the prices, discounts, and allowances extended to Rotax on Products are no less favourable than those currently extended to any other customer of Supplier for the same or similar articles in equal or lower quantities. Rotax reserves the right to make changes in drawings and specifications as to any Product covered by the Order with any delivery, lead time or substantial price difference resulting from such changes to be negotiated by the parties. Any modifications of drawings or specifications related to existing parts shall have no impact on the validity of the Order. Prices for any special tooling or equipment required must be identified in advance by Supplier and quoted separately.
- PACKING; SHIPPING.** Unless otherwise specified in the Agreement, shipments are FCA origin (ICC Incoterms 2010) and prices shall include all charges for packaging that conforms to Rotax' requirements. Supplier shall describe, mark, and pack Products in a manner appropriate to ensure the Products' protection until delivered to Rotax and the whole issue in accordance with Rotax packaging and shipping requirements (Rotax specifications) in the then current version. Each box or crate shall be marked with Rotax' purchase order number, shipping address, Supplier's name, Rotax' part number, Product description, quantity and country of origin. A copy of the packing list/invoice must be affixed to the outside of each pallet and enclosed in one identified box per pallet. A bill of lading shall be sent to Rotax on the day of shipment. Supplier shall comply with Rotax' routing instructions (Transportation agreement), if any. If Supplier fails to follow Rotax' routing instructions, Supplier shall compensate Rotax for any resulting increase in transport costs.
- DELIVERY. TIME IS OF THE ESSENCE** as to Supplier's supply of Products and Supplier shall be responsible for any related damages, including but not limited to any costs of non-delivery, delay, cover, shortage, overage or line stoppage. All Products shall be delivered in the quantities, to the location(s) and on the date(s) set forth in the Order within the specified lead times. Products received in advance may be held or returned at Supplier's risk and expense. If Product is held, Rotax' obligations shall run from the scheduled delivery dates. Supplier shall immediately notify Rotax of any anticipated failure to Deliver Products in a timely manner, which such notice shall in no way alleviate Supplier's obligations under the Order. Upon receipt of such notice, Rotax may, at its sole option, cancel or reschedule such Orders as may be affected by such notice. Supplier hereby acknowledges and agrees that the damages related to a line interruption or to the avoidance of such line interruption, will be charge to Supplier at a rate of sixty-five Euro per employee/hour (Euro 65) per line. Rotax agrees to keep records of all such costs and expenses invoiced for review by Supplier, if requested.
- TRANSFER OF OWNERSHIP.** Notwithstanding anything to the contrary herein, the transfer of ownership of the Products shall take effect at the soonest upon reception of the Products at Rotax' premises.
- QUALITY.** Supplier, at its expense, shall supply Products in accordance with good manufacturing practice and in compliance with the Agreement and Rotax' specifications and quality assurance requirements, the quality assurance agreement, if any. Products are subject to inspection and acceptance at Rotax' location notwithstanding any prior payment. Non-conforming Products may be held or returned at Supplier's risk and expense. Supplier specifically agrees to pay Rotax all costs related to rejection of

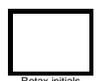


Supplier initials

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Products. Supplier shall not repair or replace non-conforming Products unless Rotax so directs. Rotax reserves the right to make repairs on defective Products and to charge Supplier any costs incurred by Rotax. Supplier agrees to provide Rotax with advance written notice in due time of any Product or process change or of any change in production site and shall not implement such change until approved in writing by Rotax. Supplier shall also inform Rotax of any deviations in the Product and shall not deliver such Product before written approval from Rotax. Rotax may, from time to time, inspect and audit the operations of Supplier, its subcontractors or vendors, upon prior reasonable notice. Upon notice to Supplier, Rotax may also maintain personnel at any Product production site to monitor quality, which Supplier hereby agrees to facilitate. Rotax agrees to abide by any reasonable safety or confidentiality requirements with respect to such site which shall in no event hinder such required inspection. Supplier's quality assurance system must be in compliance with ISO 9001:2008 and any revisions thereof.

7. **SAMPLES.** If an initial (first) sample is required according to the Agreement, Supplier shall not proceed with the fabrication or furnishing of the balance of the Products called for in the Agreement until Rotax Supplier Quality has expressly approved such sample in writing.
8. **BILLING.** Supplier shall issue invoices, bills of lading and packing lists in accordance with Rotax' requirements. Such documents shall include Supplier's packing list number, Rotax' order number, part number, item number, English description of goods, invoice quantity and unit of measure, day or period of delivery, value added tax identification numbers of Supplier and Rotax. Supplier's invoices shall also include Country of Origin, unit price and total invoice amount, with any tax, tax exemption (if any) and permitted surcharges itemized all in accordance with the applicable value added tax requirements. Time periods for payment are ninety (90) days net. Time periods for payment and discounts shall begin with the date of invoice and complete and accurate invoices and all supporting documentation.
9. **TAXES/CUSTOMS.** Prior to delivery, Supplier shall be solely liable for any taxes, duties, customs or assessments in connection with the sale, purchase, transport, use or possession of Products, exclusive of sales tax. If Supplier improperly exports or imports Products, Supplier shall be responsible for all penalties, fines, assessments or costs Rotax incurs. When applicable, K32A certificates must be supplied (Canadian supplier only). N.A.F.T.A. certificates must be supplied (North-American supplier only). All other suppliers must supply a certificate of origin upon Rotax request only. All goods must clearly be marked accordingly. Applicable marking rules must be respected. MADE IN (country of-origin) must be shown on all Products. Upon Rotax request, the supplier shall be responsible to submit any type of document, when required during business processes. The Supplier shall respect rules and regulations applicable on import and/or export countries related to goods or services provided.
10. **WARRANTY.** Supplier warrants for a period of 36 months after first retail sales of the Products and Parts that those are: (a) new and unused; (b) merchantable and free from defects in materials and workmanship; (c) free from defects in design (unless specifically designed by Rotax); (d) free and clear of all liens and encumbrances, marketable title being in Supplier; (e) in strict conformance to the specifications, drawings, PPAP requirements and descriptions in the Order and any approved samples; (f) fit and sufficient for their intended purpose to the extent Supplier knows or has means to know of such purpose; (g) in compliance with the standards in Supplier's industry and with all applicable laws, rules or regulations; and (h) in the case of services, performed in a professional and workmanlike manner. The foregoing warranties shall survive delivery, acceptance, inspection, testing, payment and use of Products and shall run in favour of Rotax, its customers and any subsequent owners or users of the Products. No disclaimer of warranty, limitation of warranty, or liability or exclusion of damages for breach of warranty appearing in any invoice or other form used by Supplier shall have any effect on the warranties contained in this Order.
11. **REMEDIES.** All remedies herein are cumulative and in addition to all rights and remedies provided by law or equity. Without limiting the foregoing, Rotax may require Supplier to refund the purchase price for, repair or replace at Rotax' option and at Supplier's expense, any Product (or re-perform any service) that fails to comply with the Agreement, regardless of such Product's location.
12. **DEFECTS.** Supplier shall immediately notify Rotax of any actual or suspected defect in a Product, or other matter that may affect the safe or proper operation of a Product or its use in a Rotax product. Notwithstanding anything to the contrary herein Supplier and Rotax expressly waive the applicability of Sec 377 UGB (Commercial Code) and Rotax shall not be under any statutory duty to inspect the goods delivered by the Supplier to preserve its warranty claims. Supplier shall provide all relevant information to Rotax and cooperate fully with the investigation and any rework, field retrofit or recall. Supplier shall be responsible for all costs incurred by Rotax due to any Product defect, as well as recall, retrofit or any other related actions based on Supplier's acts or omissions. These provisions are in addition to any warranty provided by law and a claim under such provisions shall not affect Rotax' right to make a claim under any warranty conditions provided by law.
13. **SPARE PRODUCTS.** Supplier shall maintain a supply of Products and the capability to effectively service Products for at least ten (10) years from the date of last shipment for production and to sell them at prices consistent with the last valid Product pricing, subject to reasonable setup costs incurred by Supplier. Thereafter, Supplier shall give Rotax twelve (12) months advance written notice of Supplier's election to stop supplying Products to allow Rotax to order such quantity as it may reasonably require.
14. **TOOLING.** Any and all machinery, dies, molds, jigs, fixtures, tooling, material, samples, prototypes, and any other property used to manufacture Products, which is owned, furnished, charged to, or paid for by or on behalf of Rotax in whole or in part ("Tooling") shall be and remain the exclusive property of Rotax. Title to Tooling shall pass to Rotax without regard to Rotax' payment or performance



of other obligations. Supplier and its suppliers shall not retain any lien, encumbrance or interest, nor attempt to encumber Rotax' interest in the Tooling. Tooling shall be: (a) used exclusively to fill Rotax orders; (b) maintained in good condition at Supplier's expense; (c) subject to periodic accounting by Supplier at Rotax' request and inspection by Rotax; (d) identified as to location and not be moved without Rotax' prior written approval; (e) not scrapped or destroyed without Rotax' prior written approval; any revenues gained by scrapping shall be offset against the costs of scrapping and any surplus of such revenues shall be refunded to Rotax; (f) identified as to location and not be moved without Rotax' prior written approval; and (g) promptly returned (including any components or spare parts) in the same or better condition, reasonable wear and tear excepted, at any time upon Rotax' request. Supplier agrees to assist in protecting and perfecting Rotax' interest in the Tooling. Supplier waives any lien, right of set-off or counterclaim that might permit Supplier to refuse to deliver Tooling to Rotax. All Tooling shall be conspicuously marked "Property of Rotax" and with the Rotax inventory number by Supplier, insured by Supplier and held at Supplier's risk while in Supplier's or its agent's control or possession. Supplier shall submit an updated tooling list to Rotax on a yearly basis.

15. **PRODUCT-RELATED TECHNOLOGY.** All technology, software, data, drawings, specifications, and other proprietary information or materials concerning the Product, including copies and duplicates, ("Technology") provided by Rotax to Supplier shall remain the property of Rotax. Any Technology created (1) at the request of Rotax, (2) in connection with Products sold only to Rotax, or (3) based in whole or in part on information provided by Rotax, shall be considered as ordered or commissioned by Rotax as a contribution to a collective work, and be considered "work made-for-hire" and shall belong to Rotax. To the extent such Technology may not be deemed "work made-for-hire" under the applicable law, Supplier and its employees, subcontractors and agents hereby assign, and Rotax accepts, on a paid-up basis, all right, title and interest in and to all such Technology. Supplier shall not seek any registration, patent, copyright or titling of such Technology in its name or for its benefit. Supplier shall promptly execute and deliver such documents and take such action as Rotax may reasonably request to protect or perfect Rotax' right, title and interest in the Technology. Supplier shall not supply to anyone other than Rotax any Products designed in whole or in part by or exclusively for Rotax. Supplier expressly agrees that Rotax is authorized for the unrestricted use of any and all documents including but not limited to drawings, specifications etc. provided in connection with the fulfillment of the Order by Supplier to Rotax. This right shall also apply for documents of the Supplier's vendors and therefore the Supplier is liable for being in the legal position to grant such a right. Any contrary terms in any provided document or other communication from Supplier are hereby objected to and rejected and are not binding on Rotax.
16. **TRADEMARKS.** Supplier shall not use any trademark, trade name or service mark of Rotax or its affiliates and shall not contest the validity of Rotax' right to any trademarks, trade names or service marks used by Rotax as its own.
17. **INFRINGEMENT.** Except to the extent manufactured to Rotax' specifications, Supplier warrants that the sale and use of Products will not infringe, directly or indirectly, any patent, trademark, trade name, trade secret, copyright or any proprietary right of another. If any Product or the use thereof is held to infringe any proprietary right and its use enjoined, Supplier shall, at its expense, procure for Rotax and its customers the right to continue using said Product or replace said Product with a substantially equal, but non-infringing product acceptable to Rotax. If further use of the Product is not possible, Supplier shall accept return of any unsold Product and refund to Rotax all Product costs, including but not limited to the purchase price and transportation costs.
18. **INDEMNIFICATION.** Supplier shall indemnify, defend (with counsel satisfactory to Rotax) and hold Rotax, its parents, affiliates, subsidiaries, and their respective officers, directors, employees, successors, assigns, insurers, customers and agents ("Indemnified Persons"), harmless against any and all claims, demands, actions, causes of action, liability, losses, damages, costs, expenses and reasonable attorneys' fees, which an Indemnified Person may incur in any way related to a Product, Tooling, or Supplier's performance or negligent acts or omissions, including without limitation claims for personal injury, breach of warranty, infringement, strict liability, property damage, defect, or based on warning, instructions or government action. Supplier agrees that its obligations herein shall survive the termination or expiration of the Agreement. The indemnification contained in this Section shall not pertain to design defects, to the extent the Products were manufactured by Supplier to Rotax's design.
19. **INSURANCE.** Supplier shall maintain occurrence-based commercial general liability insurance, including but not limited to products liability coverage, which (i) names the Indemnified Persons (as defined above) as additional insured; (ii) is issued by insurers rated A- or better by A.M. Best; (iii) provides coverage for bodily injury and property damage liability with "each occurrence" limits of an amount not less than U.S. three million dollars (USD \$ 3,000,000); and (iv) is maintained during the term hereof and for ten (10) years thereafter. Upon request and at least annually during the term of the Agreement, Supplier shall furnish Rotax with certificates of insurance evidencing such coverage. Supplier shall require its insurer(s) to provide notice in writing to Rotax at least sixty (60) days before any reduction in coverage, cancellation or non-renewal. If Supplier fails to maintain the insurance required herein, Rotax may, but is not obligated to, purchase such insurance on Supplier's behalf and charge back the cost of same to Supplier.
20. **COMPLIANCE WITH LAWS.** Supplier, at its expense, shall comply with all laws, regulations and requirements applicable to the Product, the supply of Products to Rotax or Supplier's performance hereunder. Supplier and its subcontractors shall comply with all wage, workers compensation, equal opportunity and reporting obligations. For deliveries to the European Union the Supplier shall inform Rotax in writing (including Email or fax) on a half yearly basis if any substances of very high concerns as listed in the Candidate List, which is published and regularly updated by the European Chemicals Agency (ECHA), accessible under



Supplier initials



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[http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_en.asp), are present in an amount exceeding 0, 1% by mass in any of the products or parts delivered by the Supplier to Rotax.

21. **CONFIDENTIALITY.** Supplier may have access to certain proprietary or confidential information of Rotax or its customers. Supplier agrees to hold such information in confidence and to use said information only for its performance under the Agreement and not for any other purpose or disclosure to any third party. The parties shall comply with any existing confidentiality agreement between them, which is incorporated herein and shall remain in full force and effect. Supplier shall not make any public acknowledgement or disclosure concerning the Agreement or its supply of Products to Rotax. Supplier shall indemnify Rotax for all damages, costs, and expenses caused by any violation of its confidentiality obligation.
22. **CANCELLATION.** Rotax may cancel any order in its entirety or in part at any time for cause and without cost or penalty in the event: (a) any Products are defective or not as warranted; (b) Supplier fails to comply with any terms of the Order; (c) a force majeure event impacts Supplier's performance; (d) Products are subject to a claim of infringement; (e) Supplier becomes insolvent, is subject to a bankruptcy proceeding or makes an assignment for the benefit of creditors; or (f) Supplier ceases or suspends its normal business operations. Rotax may cancel any order at any time without cause and if such cancelled Products were stock merchandise, Rotax' sole liability shall be to pay for Products shipped pursuant to the Agreement prior to cancellation. If such cancelled Products were manufactured to Rotax's specifications, then, upon notice, Supplier shall cease all performance related to such Products (unless otherwise directed by Rotax) and Rotax shall pay Supplier its actual costs for work and materials incurred in accordance with the Agreement, consistent with applicable lead times. Upon such payment, title to any work, materials and Products shall pass to Rotax. Further Rotax may postpone any order at any time and Supplier agrees to comply with the postponement. Supplier and Rotax shall therefore agree on reasonable compensation based on the specified lead times.
23. **FORCE MAJEURE.** Neither party will be held responsible for a breach, delay or failure of performance of any obligation hereunder that results from war, act of God or natural disaster (e.g. fire, earthquake or flood), or governmental action not due to the fault of the party (e.g. embargo). Supplier shall immediately notify Rotax in writing of any circumstances or events in the nature of force majeure or any other causes reasonably beyond the control of the Supplier that may delay deliveries as specified in the Order. In such an event Supplier shall work on alternative sources and any other means that Supplier could use to prevent further delay.
24. **WAIVER AND AMENDMENT.** Failure to require strict performance of any provision of the Agreement shall not constitute a waiver or default by a party or diminish that party's right to subsequently demand strict compliance therewith. No modification of the Agreement shall be enforceable unless in writing and signed by an authorized representative of Rotax.
25. **ASSIGNMENT.** Except as otherwise provided between the parties, Supplier shall not assign or subcontract any of its rights, duties or obligations hereunder without Rotax' prior written consent. Such consent shall not relieve Supplier of its obligations under the Agreement.
26. **HEADINGS; GOVERNING LAW.** The headings herein are for convenience only and shall not affect interpretation. The Order shall be governed by and construed in accordance with the laws of the Republic of Austria without regard to the conflict of law provisions and place of jurisdiction shall be Wels, Upper Austria; The U.N. Convention on Contracts for the International Sale of Goods shall not apply.
27. **ENGLISH LANGUAGE.** The parties hereto have agreed that this Agreement and all other documents referred to herein be drafted in English.

