

Professional rules governing the choice and cost of the fastening product screening service provider

Should the customer allege or suspect that the parts fail to comply, an agreement may be reached with the supplier for the delivered parts to be screened so as to ensure that they comply with the order. This text sets out the professional rules currently in use and best practices that apply in this context.

I - Ensuring compliance

Customers are obliged to examine the products they receive to ensure they are in compliance.

Excerpt from the General Professional Business Terms and Conditions for fastening products, Article VI.5, and excerpt from the Quality Commitments for fastening products in the automotive sector, Article 6, Artema documents filed with the Practices' Office (*Bureau des usages*) of the Paris Commercial Court:

“Verification of Products - The Client must, at its expense and under its responsibility, check the compliance of the products with the terms of the order or have such compliance checked.”

Unless otherwise specified, the customer shall bear all costs for any screening.

II - Agreement governing the screening and who to charge for the cost of the screening

Customers are still required to check for compliance even if they allege or suspect non-compliance.

If the customer wishes for screening to be carried out by a specialist service provider, the agreement with the supplier shall determine who is to bear the cost of said screening.

In the event that it is negotiated and agreed that the supplier will bear the cost of screening, the supplier shall be, by definition, responsible for choosing the company providing the screening as well as setting the terms for such service, in particular the financial terms.

In such an event, the screening company shall enter into a contract with the supplier. The customer shall not be entitled to interfere in the contractual relationship between the supplier and the screening service provider.

III - Ban on practices imposing service providers or commercial terms

Any practice by the customer as well as any agreement between a customer and a sorting service provider which imposes or aims to impose a specific service provider and/or commercial terms on the supplier, may be sanctioned as constituting:

- a restriction of free competition (L420-1 of the French Commercial Code (*code de commerce*)),
- a practice restricting competition and in particular any practice bringing about a significant imbalance in the parties' rights and obligations (Article L441-6, now Article L443-1, of the French Commercial Code).

Under no circumstances shall the customer be entitled to charge the supplier any costs relating to such screening services unless the supplier has expressly agreed to said costs beforehand. The cost may only be re-invoiced to the supplier, if applicable, if the terms have been agreed in advance.

The supplier is only likely to agree to bear the costs resulting from an alleged non-compliance, in particular the cost of screening, if said non-compliance has been sufficiently documented by the customer (using the outline, etc.).

Excerpt from the Artema Quality Commitments:

“11 / Handling of instances of Non-Compliance

The Client is under an obligation to describe the instance of Non Compliance.

All requests linked to a presumed instance of Non-Compliance shall be accompanied by the elements that prove the existence of the Non-Compliance and that make it possible to search for the causes thereof (e.g. traceability, photographs, parts regarded as being non-compliant, assembly conditions, etc.). The Client is under an obligation to cooperate.”

If it is found that the part is in compliance following the screening requested by the customer, the cost of the screening shall be borne by the customer.

