

## AUTEFA Solutions Germany GmbH – General Purchase Terms for Deliveries and Services



### 1. Scope, conflicting Supplier terms and conditions, overriding agreements

- 1.1 The legal relations between AUTEFA Solutions Germany GmbH (“**Buyer**”) and its suppliers or contractors (each a “**Supplier**”) shall be governed by these General Purchase Terms (“**General Purchase Terms**”). Supplier terms conflicting with or deviating from these General Purchase Terms will not be accepted, unless they have been specifically approved in writing by Buyer. These General Purchase Terms also apply to all future contracts between Supplier and Buyer in ongoing business relationships.
- 1.2 Any individual agreements with Supplier shall take precedence over these General Purchase Terms, as shall any Buyer specifications set out in Buyer’s orders that deviate from these General Purchase Terms.

### 2. Written form, conclusion of contract

- 2.1 All orders and acceptance confirmations, side agreements and other arrangements made prior to or at conclusion of the contract must be set forth in written or text form (letter, fax, e-mail, together “**written form**” or “**in writing**”) to become legally effective.
- 2.2 Supplier must confirm all orders in writing without delay, stating the order number. Buyer remains bound by its orders for five days after their receipt by Supplier, unless an order confirmation within a shorter time is requested in the order.
- 2.3 Supplier shall inspect the order without delay for obvious mistakes, unclear points and incomplete information and shall advise Buyer without delay of any necessary amendment or further clarification of the order.

### 3. Delivery dates and deadlines, pre-schedule deliveries and delivery by instalments, goods acceptance times, forwarding insurance, late delivery

- 3.1 All agreed dates and times for deliveries and services are binding. Supplier shall advise Buyer in writing without delay of any foreseeable delay in delivery, indicating the reasons and the anticipated duration of the delay.
- 3.2 Pre-schedule deliveries and deliveries by instalments are permitted only with Buyer’s consent. If the place of fulfilment is at Buyer’s registered office, compliance with a delivery date or deadline depends on the arrival of the goods including the required shipping papers at Buyer’s premises within Buyer’s goods acceptance times, which are: Monday to Thursday from 7 to 12h and from 12:30 to 15:30h, and Fridays from 7 to 11:30h, except public holidays at Buyer’s registered office.

- 3.3 Buyer is a customer exempted from SLVS coverage. Where it has been agreed that Supplier engages the forwarder for Buyer's account, no forwarding insurance will be effected.
- 3.4 If Supplier is late with any delivery or service, Buyer will have the right to charge damages at a fixed rate of 1% of the value of the goods or services with which Supplier is late but no more than 5% of the value of such goods or services, for each full week of delay. Supplier may show that a lower damage and Buyer may show that a higher damage has occurred and, provided the legal requirements are met, may enforce further rights, especially claim damages instead of performance or reimbursement of expenditures, and withdraw from the contract.

#### **4. Supplier's rights of retention / setoff**

- 4.1 Supplier has a right of retention against claims of Buyer only on the basis of claims from the same contractual relationship that are undisputed, ripe for adjudication, or have been established by final enforceable judgment.
- 4.2 Any set-off by Supplier shall only be permitted on the basis of Supplier counterclaims that are undisputed, ripe for adjudication, or have been established by final enforceable judgment.

#### **5. Shipping papers, packaging/labelling, delivery clauses, Supplier declaration, export restrictions**

- 5.1 All goods must be duly and properly packaged and labelled in accordance with Buyer's instructions and as set out in the terms of this section 5 below. Supplier will be liable for any loss sustained by Buyer as a result of Supplier breaching this duty.
- 5.2 Every shipment of goods must include the shipping papers, in particular but not limited to the packing slip and shipping notes, as well as any further documents as may be contractually required (for example, test certificates in accordance with the agreed specifications and contractually agreed certifications). The papers must be fixed to the outside of the shipment, in a clearly visible manner and protected against loss in a transparent sheet protector. If the shipment consists of several packages, the package including the shipping note must be labelled "LS-hier" in a clearly visible manner. All orders for collection, shipping and freight papers must show at least the following information:
- the sender,
  - Buyer's order number,
  - the order item, and
  - the material or drawing number.

Supplier further shall comply with the following obligations:

- All goods shall be packaged so as to prevent damage to the goods during normal shipping and storage handling.
  - Every package must include a detailed packing list.
  - Every packing unit may include no more than one order item.
  - Every packing unit must be labelled with the order item, the name and the quantity included in it.
  - Component groups (sets) that are delivered as unassembled parts shall be packed by sets, that is to say the parts of the same component group shall be combined in one packing unit.
  - In shipments of small parts the goods and the filler material must be clearly distinguishable from one another.
  - Hazardous products must be packed and labelled in accordance with the applicable national and international regulations.
- 5.3 Unless a place of fulfilment outside of Germany has been agreed, Supplier shall retrieve its transport packaging from the place of fulfilment at Supplier's expense, in compliance with the German Packaging Ordinance (*Verpackungsverordnung*).



- 5.4 All delivery clauses shall be construed in accordance with Incoterms 2010.
- 5.5 Supplier shall forward the required declarations certifying the origin of the goods for customs purposes under the Regulation (EC) 1207/2001 to Buyer without delay and in a timely manner, at the latest at delivery. Supplier will be liable for any and all disadvantages sustained by Buyer as a result of a Supplier declaration being submitted not in proper form or late. If necessary Supplier will prove the information about the origin of the goods by way of an information certificate issued by Supplier's customs office. Supplier shall advise Buyer without delay whether the goods or services are subject to any export restrictions in Germany (for example under the Foreign Trade Act - *Außenwirtschaftsgesetz* [AWG] or the War Weapons Control Act - *Kriegswaffenkontrollgesetz* [KrWaffKontrG]).

## **6. Invoices, pricing, shipping and packaging costs**

- 6.1 Invoices shall be submitted in verifiable form and for this purpose indicate at least the order number, the full order reference and Buyer's order date, as well as the shipping note number and the delivery date. Invoices must be itemised in conformance with the order and indicate the customs tariff number and country of origin for each item. Invoices shall be transmitted separately from the shipment.
- 6.2 Unless agreed otherwise, the prices are fixed prices DDP Buyer's registered office (Incoterms 2010), inclusive of shipping and packaging. Where DDP Buyer's registered office has not been agreed and Supplier is obliged to dispatch the goods, Supplier shall choose the most economic shipping method. Where, notwithstanding the 1<sup>st</sup> sentence of this clause, the agreed price is not inclusive of packaging the packaging shall be billed at cost.

## **7. Payment terms, no assignment, passage of title, processing of goods in Buyer's business**

- 7.1 Payment shall be made within ten days after the delivery or service and receipt of a due and proper, verifiable invoice (see section 6.1) with a 2% discount, and within thirty days net, however, not before the acceptance under section 8.3 2<sup>nd</sup> sentence of any work results and other services for which acceptance has been agreed. Any invoice failing to meet the criteria of section 6.1 above may be rejected by Buyer, in which case the beginning of the period for payment shall be the date of receipt of the new, duly prepared invoice. In the event of early delivery or services the agreed date of delivery or service shall take the place of delivery or service for the calculation.
- 7.2 Supplier shall have no right to assign its claims against Buyer or have them collected by a third party without Buyer's written consent, unless Supplier has granted its supplier an extended reservation of title in the ordinary course of business. Nothing in this shall prejudice Sec. 354a HGB (*German Commercial Code*).
- 7.3 Where a reservation of title has been agreed the title to delivered goods shall pass to Buyer upon payment. Buyer accepts no increased or extended reservation of title.
- 7.4 Buyer has the right to process, sell or otherwise dispose of delivered goods in the ordinary course of business, including before the passing of the title.

## **8. Supplier responsibility for deliverables/work results, defects, acceptance, warranty, statute of limitation for warranty claims**

- 8.1 Buyer's warranty rights are governed by the applicable laws, as amended by the terms of section 8 and 9 below.
- 8.2 Supplier has sole responsibility for the deliverables and work results, whether or not Buyer has approved any drawings, calculations and other documents or attended technical or official inspections, tests and acceptance tests. This also includes proposals, recommendations and other contributions by Buyer.



- 8.3 For deliveries of goods (including manufacture, if applicable) Buyer must report any obvious defects to Supplier within fourteen days after delivery and any hidden defects within seven days after their discovery. For work results and other services for which acceptance has been agreed, Buyer must accept any results that are ready for acceptance within fifteen days after completion and notification that the results are ready for acceptance. Where Buyer inspects the goods prior to delivery at Supplier's premises in agreement with Supplier or where the parties have agreed acceptance for services that are not work results, the inspection at Supplier's premises or the acceptance shall take the place of any inspection on delivery according to Sec. 377(1) HGB; Buyer is obliged to further inspect such goods only for obvious defects that were not yet in evidence at the inspection at Supplier's premises or the acceptance (for example, obvious damage in transit).
- 8.4 Supplier will bear all expenditures incurred in connection with determining and removing defects, including disassembly and assembly costs, and including expenditures incurred by Buyer.
- 8.5 Any payments towards the purchase price prior to the determination of a defect or acceptance of the goods by an agent of Buyer from Supplier shall not constitute an acknowledgment that the goods are free of defects or release Supplier of its liability for defects.
- 8.6 Buyer may in its discretion choose between the removal of a defect or delivery of a replacement or, where work results are concerned, the completion of a new work result.
- 8.7 Where, due to particular urgency of the matter, it is not appropriate to set a deadline for Supplier to take remedial action Buyer, without prejudice to its legal remedies, has the right to undertake or arrange for substitute performance at Supplier's expense. Buyer will give Supplier advance notice of any such substitute performance, where possible.
- 8.8 Buyer's warranty claims for deliveries and services rendered by Supplier shall become time-barred 36 months after the beginning of the statutory limitation. Warranty claims for structures, for goods that were used for a structure in accordance with their ordinary usage and caused the structure to become defective, and for the event that Supplier fraudulently concealed the defect shall become time-barred within the statutory limitation periods. Without prejudice to any other or further reasons for suspension or interruption of the limitation period, the limitation period will be suspended for deliveries and services that cannot be used as agreed by contract for reason of remedial action, for the duration of such remedial work.

## **9. IP rights, Supplier deliveries to third parties**

- 9.1 Supplier shall indemnify Buyer against any and all claims of third parties resulting from any infringement of patents, copyrights, design rights, trademark rights, name rights and other intellectual property rights and applications for intellectual property rights ("**IP Rights**") through the contractually agreed use of the deliverables, unless Supplier is not responsible for the infringement of rights. This applies equally to all necessary expenditures incurred by Buyer in connection with any such third party claims, in particular the costs of legal defence. Supplier further is liable for all consequential losses incurred by Buyer, particularly as a result of shortage of supplies and disruptions of production.
- 9.2 IP Rights that arise from developments based on special orders by Buyer or joint developments with Supplier are vested solely in Buyer if they are based exclusively on proprietary Buyer knowhow and/or if Buyer bears the development costs. For this purpose, Supplier herewith assigns to Buyer any and all IP Rights in such developments at the latest at the moment of their creation. If it is impossible to assign the resultant IP Rights to Buyer, Supplier will grant Buyer at the latest at the moment of their creation exclusive rights of use at no charge, for full exploitation, in particular with no limit as to time, territory and subject matter.



- 9.3 Supplier may use any goods made with designs, drawings and specifications of Buyer, which include IP Rights or secret knowhow of Buyer, only to fulfil the contract with Buyer. This includes goods including no IP Rights or secret knowhow of Buyer but for the manufacture of which Supplier requires drafts, plans or other documents prepared by Buyer or for Buyer's account, or stencils, moulds, tools or related accessories owned by Buyer, if the goods manufactured by Supplier differ significantly in form, function or composition from other products made by Supplier or available in the market.

#### **10. Liability, limitation of claims**

Unless set forth otherwise in these General Purchase Terms the liability and the limitation of claims shall be governed by the applicable laws. Any limitations and exclusions of liability of Supplier will not be accepted.

#### **11. Tools, drawings, provision of materials, manufacturing means, insurance, sub-suppliers**

- 11.1 If, at Buyer's expense, Supplier makes any tools for purposes of fulfilling the contract (whether such tools are indicated separately or included in the total price), the parties agree that such tools shall be Buyer's property. In lieu of their actual handover, Supplier has the right to keep the tools on loan until the contract has been completed. Supplier may not use the tools for fulfilling other orders from third party buyers. Upon fulfilment of the contract and on Buyer's request Supplier must release the tools to Buyer.
- 11.2 All items, models, documents, drawings, samples and tools made available to Supplier by Buyer are the property of Buyer. This includes items acquired by Supplier at Buyer's expense for fulfilling the contract, and material provided by Buyer. The items and documents made available to Supplier may only be used and – as permitted by copyright legislation and only as strictly necessary to fulfil the contract – copied for fulfilling the contract with Buyer. After fulfilment of the contract and at Buyer's request, they must be returned to Buyer without delay, including all duplicates made thereof.
- 11.3 Supplier bears the risk of loss of and damage to Buyer property, however, not for normal wear and tear. Supplier will store Buyer's property separate from other property of Supplier, with the diligence of a prudent businessman, handle it with care, maintain it in good condition and, as reasonably feasible, mark it as Buyer property. Buyer's property may not be removed from Supplier's business premises and/or the agreed location, sold, used as collateral, pledged, etc. without Buyer's prior written approval.
- 11.4 Buyer's property may not be joined, mixed or processed with Supplier's or a third party's property unless this is necessary for fulfilling the contract with Buyer. In the event of processing or transformation, Buyer shall be considered the producer. If Buyer's property is joined or inseparably mixed with other items, Buyer shall be considered co-owner at the proportion of the value (purchase value plus value-added tax) that the items had at the time of joining or mixing. If such joining or mixing is such that Supplier's property may be considered the main component, it shall be agreed that Supplier transfers proportionate co-ownership to Buyer. Supplier shall store the sole or joint property for Buyer.
- 11.5 Supplier shall insure Buyer's property at Supplier's expense. Supplier hereby assigns to Buyer, who accepts the assignment of, any payment claims against Supplier's insurance.
- 11.6 Any sub-suppliers must be subjected to obligations equivalent to those laid down in this section.



## **12. Spare parts**

Supplier shall supply spare parts at reasonable conditions for the duration of the ordinary technical service life of the deliverables but at least for twelve years after the last delivery. If Supplier discontinues the delivery of spare parts upon expiration of the term set out in the 1<sup>st</sup> sentence of this clause or discontinues delivery of the deliverables prior to the expiration of such term, Supplier must allow Buyer the opportunity of placing a final order.

## **13. Change of production, Buyer inspections, compliance**

- 13.1 In an ongoing business relationship, Supplier shall advise Buyer without delay in writing of any intended change of materials or bought-in parts as well as any intended product modification, conversion or relocation of production, change of analysis methods and other alterations that may impact the quality and safety of the products purchased by Buyer. Any changes to the agreed specifications will not be permitted, except with Buyer's prior written consent.
- 13.2 Buyer has the right to demand access to the manufacturing sites of Supplier and/or of Supplier's sub-suppliers during normal operating hours in order to inspect the status of production, the use of suitable materials, the deployment of the required skilled personnel and professional workmanship as well as Buyer's property (see section 11). Where required, and requested by Supplier, to protect any trade or business secrets of Supplier these inspections shall be carried out by a third party sworn to secrecy, who must not forward any information about trade and business secrets to Buyer. Any such inspections will remain without legal effect on the formal acceptance of the deliveries and services.
- 13.3 Supplier shall comply with all laws applicable to the deliveries and services, in particular but not limited to environmental protection, health and occupational safety, including any minimum wage, product safety, anticorruption, and data protection legislation.

## **14. Confidentiality, advertising**

- 14.1 The contracting parties shall treat as a business secret and keep confidential any and all commercial and technical information that is not publicly known and which is disclosed to them in connection with the business relationship. This confidentiality undertaking shall survive and remain in effect after the termination of the contract. The confidentiality undertaking does not extend to information which (i) is or becomes publicly known other than by a breach of rights, (ii) is known to the other party at conclusion of the contract, or (iii) is disclosed to the other party by a third party without breaching any nondisclosure obligation.
- 14.2 The contracting parties may not advertise their business relationship or use it for reference purposes, except with prior written consent.

## **15. Place of fulfilment, governing law, forum**

- 15.1 The place of fulfilment shall be at Buyer's registered office, unless stated or agreed otherwise.
- 15.2 The legal relations between the parties shall be governed exclusively by the substantive laws of Germany to the exclusion of the UN Sales Convention (CISG).
- 15.3 The exclusive place of jurisdiction shall be the courts having jurisdiction at the registered office of Buyer, if Supplier is a trader or if Supplier has no general place of jurisdiction in Germany at the time the lawsuit is filed. Buyer has the right, however, to appeal to any court having legal jurisdiction.

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