

# GENERAL TERMS AND CONDITIONS FOR PURCHASES OF GOODS AND SERVICES

## 1 GENERAL PURPOSE

These General Terms and Conditions are applied in the supply of the Goods and Services by the Supplier to Zanders GmbH. These General Terms and Conditions shall be applied in the supply of the Goods and Services, even if any offer, order acknowledgement or other similar document refer to any other general terms and conditions, and these General Terms and Conditions shall overrule any such other terms and conditions. Any amendments or deviations from these General Terms and Conditions must be agreed in writing specified in detail in a Contract (as defined below) entered into between the Parties.

## 2 DEFINITIONS

In these General Terms and Conditions the following terms shall have the meaning defined herein:

“Contract” shall mean a specific contract and/or a confirmed purchase order or the like regarding the supply of the Goods and/or Services and entered into between the Purchaser and the Supplier (including all appendices, agreed amendments and additions to such Contract).

“Goods” shall mean the goods defined in the Contract to be provided by the Supplier to the Purchaser under the Contract and in accordance with these General Terms and Conditions.

“Parties” shall mean the Supplier and the Purchaser jointly, and a “Party” shall mean either of them.

“Price” shall mean the compensation defined in the Contract to be paid by the Purchaser to the Supplier against the supply of the Goods and/or Services.

“Purchaser” shall mean Zanders GmbH purchasing the Goods from the Supplier.

“Services” shall mean the services defined in the Contract to be provided by the Supplier to the Purchaser under the Contract and in accordance with these General Terms and Conditions. What is later stated in these General Terms and Conditions regarding the Goods shall in all relevant part apply to the Services.

“Supplier” shall mean the supplier of the Goods.

## 3 SCOPE

3.1 The Supplier shall sell and the Purchaser shall buy the Goods in accordance with the terms and conditions of the Contract and these General Terms and Conditions.

3.2 No exclusivity or similar rights of any kind are granted to the Supplier and the Purchaser is entitled to purchase goods from other suppliers at its free discretion.

3.3 If the Purchaser wishes to make any changes to the specifications of the Goods prior to delivery of the Goods, the Parties undertake to negotiate in good faith in order to agree on such changes in the specifications and the related changes in other terms and conditions of the Contract.

## 4 QUALITY OF GOODS

4.1 The Supplier shall ensure that the Goods supplied:

- are of the quality and in accordance with the specifications set out in the Contract;
- are always of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier at the time the orders are placed. Otherwise the Goods shall be fit for the purpose for which similar goods are ordinarily used.
- are in compliance with the local regulations and/or standards of the markets in which they are sold and to which they are delivered;
- are labelled and packed in compliance with the regulations in force in the European Union and in any other country to which the Goods are supplied. The purchase order number must be indicated on each package.

4.2 The Supplier shall ensure that the evaluation of risks caused to human health and the environment when using the Goods is made at least according

to the laws and common prevailing practices of the European Union. The Supplier must ask more information about the use of the Goods at Purchaser's site, if it is necessary for risk evaluation mentioned above, or for legal registration. The Goods and the Supplier must have been reported for registration according to the laws and regulations of the country to where the Goods are delivered.

4.3 The Purchaser shall, during and after the time of manufacture of the Goods, have the right to inspect the quality of the Goods at Supplier's place of manufacture. This right does not diminish the responsibilities of the Supplier according to these General Terms and Conditions.

4.4 The Supplier undertakes to provide the requisite essential spare parts for a period of at least ten (10) years from the beginning of the guarantee period (Clause 10.2). In the case of data processing equipment the same period of time as above shall apply, but instead of "spare parts", "spare parts or replacement unit or repair of such part or unit" shall apply.

## 5 SERVICES AND PERSONNEL

5.1 In addition to the items listed in Clause 4, the Services supplied under these General Terms and Conditions (whether related to supply of the Goods or not) shall be provided with the accuracy and the professional skill to be expected from a professional and experienced service provider and the Supplier shall reserve sufficient recourses for implementation of the agreed service level.

5.2 The Supplier shall be responsible for its personnel/subcontractors carrying out the Services. If not otherwise agreed in writing between the Parties, the Supplier is responsible for the supervision of the work.

5.3 The Purchaser shall arrange the necessary safety training and/or ensure that the Supplier and its personnel/subcontractors have received appropriate information about the order, safety and security at the workplace. The Supplier shall acquaint itself with the working conditions at the place where the Services are provided and ensure that its personnel/subcontractors are informed of and comply with any safety regulations and instructions of the Purchaser in force at the place where the Services are carried out.

5.4 The Purchaser shall ensure that the Supplier has access to the premises where the Services are carried out. Unless otherwise agreed in the Supply Agreement, the Services shall be carried out during the normal working hours of the place or site where the Services are provided.

5.5 The Supplier shall provide the Purchaser with all reports and information concerning the Services or the Supplier's employees/subcontractors that the Purchaser is required to have due to the applicable laws and regulations.

## 6 INFORMATION

6.1 The Supplier shall provide the Purchaser with the documentation necessary to get the Goods in a running order and together with the adequate information (including material safety data sheet) about the use for which purpose the Goods are ordered.

6.2 The Supplier shall provide the Purchaser with the drawings and documentation required for normal maintenance of the Goods.

## 7 DELIVERY OF GOODS

7.1 The Goods shall be delivered in accordance with the Contract and within the term indicated in the Contract.

7.2 The Goods are delivered according to Incoterms 2010 as specified in the Contract. **The presumed term used is DAP (Incoterms 2010).** The title of ownership to the Goods shall transfer to the Purchaser at the time of delivery.

## 8 DELAY IN SUPPLY OF GOODS

8.1 If the Supplier fails to deliver the Goods at the agreed time and such a delay is not due to the Force Majeure event as defined in Clause 18 or to reasons attributable to the Purchaser, the Supplier shall be obliged to pay to the Purchaser liquidated damages in the in accordance with the following:

- For each following week or fraction of the week for which the delivery is postponed beyond the date specified in the Contract, liquidated damages for a late delivery is one (1) per cent of the Price of the Goods.  
- Total liquidated damages for a late delivery shall not exceed five (5) per cent of Price of the Goods

If the actual costs and damage incurred by the Purchaser due to the delay of the Supplier exceed the amount of the liquidated damages, the Purchaser shall have the right to claim damages from the Supplier for such exceeding costs or damage.

8.2 If the Supplier fails to supply the Goods within a reasonable time after having received a written notice from the Purchaser, the Purchaser is entitled to purchase the delayed Goods from a third party and the Supplier shall compensate all additional costs due to this purchase.

8.3 If the Supplier becomes aware of any circumstances that may cause the delay in the supply of the Goods, the Supplier must take measures to remove the threat without delay and inform the Purchaser thereof.

8.4 The Purchaser shall immediately notify the Supplier if the Goods cannot be supplied at the agreed time due to a reason attributable to the Purchaser. If such a delay is not due to the Force Majeure event as defined in Clause 18 or to reasons attributable to the Supplier, the Purchaser shall reimburse the costs and damage incurred by the Supplier due to the delay.

## 9 DEFECTS

9.1 Where the Goods do not conform with the terms and conditions of the Contract and/or these General Terms and Conditions, the Purchaser shall inform the Supplier thereof within reasonable period after having become aware of such defect.

9.2 The Purchaser reserves the right to accept or reject the whole or any part of the defected Goods and if rejected to return the Goods to the Supplier at the Supplier's own risk and expense.

## 10 MECHANICAL GUARANTEE

10.1 The Supplier guarantees for a period of 24 months the proper design, construction and quality of the Goods furnished under the Contract and these General Terms and Conditions.

10.2 The guarantee period shall be calculated from the completion date of the delivery of the Goods. However, the guarantee period of the Goods delivered to be stored by the Purchaser will start when such Goods are taken into operation and at the latest after six (6) months' storing period.

10.3 The Supplier shall without delay at its own cost rectify and/or replace any defective Goods and to compensate to the Purchaser the losses arisen as result of such defects. The rectified or replaced Goods shall have a new guarantee period of 24 months. However the guarantee period shall extend for a maximum of 48 months from the commencement date of the original guarantee period in accordance with Clause 10.2.

10.4 After the expiry of the guarantee period the Supplier is liable for latent defects which existed on the date of expiry of the guarantee period and which the Purchaser could not reasonably be expected to notice during the guarantee period and for defects arisen as result of the Supplier's gross negligence. Notwithstanding the above, the Supplier's liability for latent defects shall expire when 48 months have passed from the expiration of the guarantee period.

10.5 The Supplier is not liable for any defects attributable to the deficient maintenance of the Goods by the Purchaser or their improper use, handling and storage, provided the Supplier has fulfilled its obligations under Clause 6.

10.6 This mechanical guarantee does not cover any normal wear and tear.

## 11 PRICE AND INVOICING

11.1 On completion of delivery of the Goods the Purchaser shall pay the Price to the Supplier against an invoice. Payments shall be made within 60 days of the date of the invoice

11.2 The Price for the Goods shall be fixed for the entire term of the Contract and shall not be subject to any revision.

11.3 The Price shall be the total compensation payable by the Purchaser for the Goods. No other costs may be charged to the Purchaser unless otherwise has been specifically agreed in the Contract.

11.4 Applicable value added tax or other such statutory tax payments shall be added to the Price in accordance with the laws and regulations applicable from time to time.

11.5 If the Purchaser has not paid an undisputed Price within 21 days after the due date of the Price, the Supplier is entitled to suspend the supplies of the Goods.

11.6 The Purchaser reserves the right to withhold payment of any Supplier invoice where the Goods have not been provided in accordance with the terms and conditions of the Contract and these General Terms and Conditions. The withholding of payment shall correspond to the value of the defective delivery.

11.7 Unless otherwise agreed the Contract, penalty interest is charged according to the applicable law.

## 12 SUBCONTRACTING

12.1 The Supplier is entitled to use subcontractors in the supply of the Goods subject to prior notice to the Purchaser. The Supplier shall at the request of the Purchaser provide the Purchaser with information on its subcontractors and upon the reasonable request of the Purchaser withdraw and/or replace any subcontractor.

12.2 The Supplier is responsible for the actions of its subcontractors as it is for its own.

## 13 INTELLECTUAL PROPERTY RIGHTS

13.1 All rights to the documents (e. g. plans, drawings, technical documents, software) made available by the Purchaser to the Supplier for the supply of the Goods and/or the fulfilment of the Services shall remain the property of the Purchaser.

13.2 The Supplier is responsible for making sure that no rights of third parties will be infringed in conjunction with the supply of the Goods and/or performance of the Services.

13.3 All intellectual property rights created in the performance of the Services shall vest in the Purchaser.

## 14 LIABILITY

14.1 If the Supplier fails to supply the Goods in accordance with the Contract and/or these General Terms and Conditions and/or there is a defect in the Goods, the Supplier shall without delay at its own cost remedy the breach or defect.

14.2 The Supplier is not liable to remedy breaches or defects that have been caused by the actions of the Purchaser or incorrect information provided by the Purchaser for purposes of the supply of the Goods.

14.3 If the Supplier fails to remedy the breach or defect in the Goods within a reasonable time after having received a written notice from the Purchaser, the Purchaser is entitled to remedy the breach or defect itself or have it repaired by a third party at the cost of the Supplier. Alternatively, the Purchaser shall be entitled to a reduction of the Price reflecting the difference between the defect-free Goods and the defective Goods.

14.4 The Purchaser shall notify the Supplier of the defects in the supplied Goods within reasonable period after having become aware of such defect. If the Purchaser fails to give such notification within reasonable time period, the Purchaser shall lose its right to present claims towards the Supplier, except for apparent defects that should have been in the knowledge of the Supplier and defects that have been caused by the Supplier's gross negligence or wilful acts or omission.

14.5 The Parties are liable for damage caused to third parties in accordance with the applicable laws.

## 15 LIMITATIONS OF LIABILITY

Neither Party shall be liable for any indirect or consequential damage, including but not limited to loss of income or interruption of production or services. This limitation of liability does not apply to damage caused by Party's gross negligence or wilful acts/omission or any damage caused to Purchaser's property.

## 16 TERMINATION

16.1 If either Party is in material breach of the Contract and/or these General Terms and Conditions and does not remedy such breach within reasonable period after having received a written notice thereof from the non-breaching Party, the non-breaching Party is entitled to terminate the Contract with immediate effect and without any liability towards the breaching Party.

16.2 In case of termination of the Contract in accordance with Clause 16.1, the breaching Party shall compensate the non-breaching Party the damage and costs incurred by the non-breaching Party as result of the termination of the Contract.

16.3 If the Purchaser has become entitled to receive the maximum amount of the liquidated damages pursuant to Clause 8.1 of these General Terms and Conditions, the Purchaser is entitled to terminate the Contract with immediate effect.

16.4 Either Party shall terminate the Contract with immediate effect in the event that the other Party becomes subject to any bankruptcy or insolvency proceeding.

## 17 CONFIDENTIALITY

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Purchaser and any other confidential information concerning the business or products of Zanders GmbH which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors comply with the provisions of this clause.

## 18 FORCE MAJEURE

18.1 Neither Party is liable towards the other Party for delays or failures to fulfil its obligations if the delay or failure to is due to any event, which is not foreseeable and is beyond the control of the Parties and which could not have been prevented or overcome by reasonable efforts of the prevented Party ("Force Majeure"). The Party affected by Force Majeure shall be excused for its non-performance during the duration of Force Majeure. The Party affected by Force Majeure shall immediately notify the other Party about Force Majeure event and its consequences and expected duration. In the Force Majeure situation both Parties shall use their reasonable efforts to prevent or mitigate any damage or costs caused by such Force Majeure event and to ensure the continued and undisturbed business operations of the Purchaser.

18.2 If either Party is unable to fulfil its obligation due to a Force Majeure Event for a period exceeding thirty (30) days, either Party is entitled to terminate the Contract with immediate effect without any liability towards the other Party. The termination notice shall be delivered in writing.

## 19 ASSIGNMENT

Neither Party is entitled to assign or otherwise transfer the Contract in whole or in part to any third party without a prior written consent of the other Party. However, if the Purchaser sells or otherwise transfers a mill or other business operations, in or for which the Goods are supplied, the Purchaser is entitled to assign the Contract with the rights and obligations relating to such mill or other business to the third party acquiring the business in question.

## 20 APPLICABLE LAW AND DISPUTE RESOLUTION

20.1 The laws of Germany shall be applied to the Contract, without regard to conflict of laws rules.

20.2 Any disputes between the Parties arising out of or in connection with the Contract are to be settled before a competent court at Bergisch Gladbach.