

**General Terms and Conditions for Purchase of Goods and Services**  
**(Status: 2016-02-18)**

**1. Applicability**

- 1.1 The purchase of Goods, Software and Services (hereinafter „Products“) by DEUTA-WERKE GmbH (hereinafter „Purchaser“) shall exclusively be governed by these General Terms for Purchase of Goods and Services (hereinafter GTC-P) of the Purchaser. Business Terms of the Supplier (hereinafter „Supplier“) or of third parties shall not apply even if the Purchaser does not explicitly reject them. The Purchaser shall explicitly accept their application in written form. Even if the Purchaser refers to a written communication that contains business terms of the Supplier or of a third party or makes mention of such this shall not constitute any acceptance of those business terms.
- 1.2 The present GTC-P shall also apply to all future transactions with the Supplier even though not specifically agreed.
- 1.3 This GTC-P shall only apply in relation to merchants, legal entities of public law or segregated estates under public law.

**2. Conclusion of a Contract**

- 2.1 The Supplier undertakes to acknowledge each purchase order within a period of two (2) weeks otherwise the purchase order shall be deemed accepted by the Supplier.

**3. Price and Payment Terms**

- 3.1 The prices are valid for Products listed in the purchase order. Unless otherwise agreed in writing the prices of the Products are Delivery Duty Paid (DDP) according to INCOTERMS 2010 including packaging. The place of destination is shown in the respective individual purchase order. Inasmuch the price does not include packaging according to former agreement and the price of the packaging is not specified separately the packaging shall be invoiced at cost price. On request of the Purchaser the Supplier will take back the packaging at his cost.
- 3.2 The price indicated in the purchase order is net plus statutory value-added tax.
- 3.3 The Purchaser will not accept any freight and stock insurance („Speditions-, Logistik- und Lagerversicherung “ (SLVS)) as well as any costs resulting from this.
- 3.4 Unless otherwise agreed in writing the payment terms are fourteen (14) days with three (3) % discount from the date of proper delivery and receipt of invoice, or thirty (30) days net from the date of proper delivery and receipt of invoice.
- 3.5 In the event the Purchaser fails to pay in due time, then the Supplier is entitled to charge interest on the outstanding amounts at a rate of five (5) percent points above the base rate from the due date.
- 3.6 The Purchaser shall be entitled to claim statutory setoff and retention rights.

**4. Delivery Date – Delivery – Place of Fulfilment**

- 4.1 The delivery date indicated in the purchase order is binding, advance delivery is not accepted.
- 4.2 The Supplier undertakes to inform the Purchaser immediately in writing if circumstances arise or become apparent to him indicating that the agreed delivery time cannot be met.
- 4.3 In the event of delay in delivery the Purchaser is entitled to statutory rights.
- 4.4 In the event of delay in delivery the Purchaser is entitled prior written notification to demand from the Supplier a contractual penalty amounting to 0.5 %, maximum 5 % of the respective order value. The contractual penalty shall be set off against the damage for delay to be paid by the Supplier.
- 4.5 The Supplier may only make part deliveries and provide partial performance of the Products prior written consent of the Purchaser.
- 4.6 The Supplier undertakes to grant to the Purchaser the possibility to place a last order with reasonable quantities (Last-Call Right) prior discontinuation of any Products.
- 4.7 The place of fulfilment is the business location of the Purchaser.

**5. Transfer of Risk - Documents – Reservation of Ownership**

- 5.1 Unless otherwise agreed in writing the delivery term shall be Delivery Duty Paid (DDP) according to INCOTERMS 2010 including packaging. The place of destination is included in the respective individual purchase order. The risk is transferred to the Purchaser – even if dispatch has been agreed – only after the delivery item is handed over at the agreed place of destination.
- 5.2 The Supplier is obliged to show the exact purchase order number, the frame contract number, the EDP article number as well as the drawing number on all transport documents and delivery notes. In the event the Supplier fails to do so, delays in processing are inevitable. The Supplier will be liable for any resulting damages.
- 5.3 With the handing over the Products delivered by the Supplier the Purchaser acquires directly ownership of the delivered Products. Reservation of ownership by the Supplier shall only apply insofar this relates to the payment duty of the Purchaser for the respective delivered Products to which the Supplier reserves the title of ownership. In particular, extended reservation of ownership is not allowed.
- 5.4 If the Purchaser provides the Supplier with Products for processing or modification the Purchaser reserves title of ownership to the provided components. The processing or modification is executed by the Supplier on behalf of the Purchaser. If the Reserved Goods are processed with other materials from a number of owners, then the Purchaser acquires co-ownership of the newly produced object in relation of the value of the Reserved Goods to the value of the newly produced objects at the time of processing.

**6. Defects Investigation – Liability for Defects**

- 6.1 The Purchaser undertakes to check the delivered Products in respect to possible quality or quantity discrepancies within a reasonable period of time. If the Supplier receives the notice of defect within two (2) weeks after delivery this shall be considered in due time. To hidden defects a period of two (2) weeks after detection of such defects shall apply
- 6.2 The Purchaser is entitled to the full statutory warranty rights. In particular, the Purchaser is entitled at his discretion to demand from the Supplier either to remedy the defect or to deliver Products free from any defects. The Supplier, however, has the right to refuse the kind of supplementary performance chosen by the Purchaser provided this means disproportionate costs to him. The Supplier shall bear all expenses resulting from the supplementary performance, in particular, freight costs, travel expenses, labour and material costs. The Purchaser explicitly reserves further statutory rights such as the right to withdraw from the contract, to reduce the purchase price or to assert claims for damages.
- 6.3 In the event the Supplier culpably omits to notify the Purchaser in time that a Product is discontinued or culpably omits to offer a reasonable quantity for a final purchase order (Last-Call Right) then the Supplier shall be liable to the Purchaser for the damages resulting from this.
- 6.4 Warranty claims are subject to the statutory period of at least 24 months. The warranty period commences on the delivery date of the Products. Provided acceptance has been agreed taking place after delivery of the Product, the warranty period commences on the date of acceptance.

- 6.5 On receipt of the written notice of defect the warranty period shall be suspended until the Supplier either rejects the claims of the Purchaser, or declares the defects to be repaired or otherwise refuses to continue negotiations about the claims. In respect to replacement delivery and remedy the warranty period commences anew for the replaced or repaired parts unless the Supplier gave reason to the Purchaser because of his behaviour to assume that he did not take liability for the measurement but replaced or repaired the parts only as a gesture of goodwill or due to similar reasons.

**7. Product Liability – Indemnity – Liability Insurance**

- 7.1 Inasmuch the Supplier is responsible for any Product defects he shall be obliged to indemnify the Purchaser against any claims of third parties provided the cause lies within his control and organisation and he himself is liable to third parties.
- 7.2 Within this framework and according to §§ 683, 670 German Civil Code („BGB“) the Supplier shall also compensate for any possible expenses arising from or in connection with a recall action carried out by the Purchaser. The Purchaser will inform the Supplier – as far as possible and reasonable – on the content and the extent of the recall measures to be carried out giving the opportunity to comment.
- 7.3 The Supplier undertakes to maintain a product liability insurance with an overall sum of not less than three (3) million EUR per personal injury/material loss. Inasmuch the Purchaser is entitled to further damage claims, these shall remain unaffected. The Supplier shall provide to the Purchaser a copy of the insurance policy, on demand.

**8. Minimum Wages Act**

- 8.1 The Supplier confirms to comply to the full extent with the obligations as well as statutory regulations as per German Minimum Wages Act („Mindestlohngesetz“) MiLoG).
- 8.2 In principle, the Supplier himself executes the task as contractually specified. Inasmuch as he assigns any subcontractor or any other company executing the task he undertakes to ensure and monitor by contract that also such subcontractor or company complies with the stipulated provisions.
- 8.3 In the event the Purchaser faces future liability claims or governmental penalties arising out of the Supplier’s violation of the provisions under section 8.1 and 8.2 he shall indemnify the Purchaser against any resulting damages and relating obligations. This shall also apply in the event that the Purchaser lays claim basing on the circumstance that the subcontractor or the company assigned by the Supplier violates the aforementioned obligations unless the Supplier complied with his obligations under Section 8.2 towards the subcontractor or the company which are not vicarious agents. Any indemnity obligation shall be complied with on first demand of the Purchaser.

**9. Property Rights - Secrecy**

- 9.1 The Supplier undertakes – with regard to his Products – not to infringe any industrial property rights or any other rights of third parties in countries of the European Union or other countries in which the Supplier manufactures himself or has the Products manufactured.
- 9.2 In the event a third party makes such claims on the Purchaser, the Supplier shall indemnify the Purchaser against any of these claims. Such claims shall be forfeited if the Purchaser proves that he is neither responsible for the infringement of property rights nor would have had to recognize it by applying commercial diligence, at the point of time of delivery. Without consent of the Supplier the Purchaser is not obliged to make any arrangements with a third party, in particular, not conclude any settlement agreement.
- 9.3 The indemnity obligation of the Supplier applies to all expenses necessarily arising out or in connection with a claim made on the Purchaser by a third party.
- 9.4 Further statutory rights of the Purchaser due to defects of title on the delivered Products remain unaffected.
- 9.5 The Purchaser reserves proprietary and copy rights on illustrations, drawings, calculations and other documents, they may not be disclosed to any third party prior consent of the Purchaser. The Supplier requires the explicit written consent of the Purchaser before the disclosure to third parties. This applies, in particular, to those written documents designated as “confidential“. The documents shall be used exclusively for manufacturing purposes on the basis of the purchase order; after execution of the order or if negotiations do not lead to a conclusion of a contract, they shall be returned to the Purchaser without further request. The Supplier shall destroy any reproductions of the documents; exempted hereof are retention in connection with the statutory retention obligations as well as data storage for hedging purposes in the framework of usual data backup.
- 9.6 The obligation to keep secrecy shall survive even after the contract execution. It expires when and inasmuch the know-how included in the illustrations, drawings, calculations or

other documents has already been in the public domain or without any fault of the Supplier will be in public domain, or the Supplier himself has rightfully developed the manufacturing know-how.

#### **10. Open Source Software**

- 10.1 In principle, the Supplier may not use any open source software. Inasmuch as he still uses such software this shall be subject to prior written consent of the Purchaser. In addition, the Supplier undertakes to comply with all license obligations, particularly to make available to the Purchaser all relevant license texts, copyright notices as well as the source code with the delivery of the software.
- 10.2 In the event of any violation of the provisions in section 10.1, the Supplier shall indemnify the Purchaser against any claims, damages, losses and costs and shall defend any claims against the Purchaser arising from the violation of this clause.

#### **11. Environmental Protection**

- 11.1 The Supplier undertakes to comply with the relevant statutory environmental protection regulations in the current version. The Products supplied by the Supplier may especially not contain the following substances: PCT (polychlorinated tetraphenyls), PBDE (polybrominated diphenyl ethers), SCCP (short-chain chloroparaffins), nonylphenol, chromium (VI) compounds. In addition, the following substances shall be avoided: cobalt chloride, isocyanate, phthalates (BBP, DBP, DEHP), polyvinyl chloride, organic tin compounds, triphenyl phosphate (TTP). Should these substances be unavoidable and contained in the tendered and supplied Products, then the Supplier undertakes to bring this to the attention of the Purchaser by special notice.
- 11.2 Furthermore, the Supplier undertakes with regard to Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) according to the European Directive (EC) no. 1907/2006 to inform the Purchaser immediately as soon as he becomes aware of the presence of a substance of very high concern (SVHC) above a mass per unit volume of 0.1 % in the raw materials delivered to him. EU Suppliers of manufactured items that are processed in the Purchaser's Products in a relevant amount shall also be obligated to inform the Purchaser without further request if the Products delivered by them contain a SVHC with over 0.1 % by mass.
- 11.3 In addition, the Supplier ensures that the delivered Products comply with the regulations of the European Directive (EC) no. 2011/65/EU for the restriction of hazardous substances (RoHS) in electrical and electronic appliances.

#### **12. Import and Export Regulations – Customs**

- 12.1 The Supplier shall comply with all relevant rules and regulations of the national and international Customs- and Foreign Trade Law. If necessary, he shall provide the Purchaser in writing with such information and data which the Purchaser needs for exporting, importing and re-exporting (such as but not limited to statistical goods number, certificate of origin).
- 12.2 Imported goods must be delivered duty-paid. The Supplier is obliged to provide possible required declarations or information and to contribute to necessary actions.

#### **13. Assignment**

- 13.1 Except for monetary claims, the Supplier is not entitled to assign his claims resulting from the contractual relationship with the Purchaser to any third parties.

#### **14. Jurisdiction, Applicable Law – Partial Nullity**

- 14.1 Inasmuch as the Supplier's place of business is within the national jurisdiction of Germany then the Purchaser's place of business shall be the place of jurisdiction for all disputes in the business relationship between the Supplier and the Purchaser. Furthermore, the Purchaser shall be entitled to sue the Supplier at his place of business as well. Mandatory statutory regulations on exclusive places of jurisdiction shall remain unaffected by this provision.
- 14.2 Inasmuch as the Supplier's place of business is abroad any disputes in the business relationship between the Supplier and the Purchaser with an amount in dispute up to and including € 50,000.00 shall be decided by the ordinary civil courts. The place of jurisdiction shall be the place of business of the Purchaser. Mandatory statutory regulations on exclusive places of jurisdiction shall remain unaffected by this provision. Any eventual disputes in the business relationship between the Supplier and the Purchaser with an amount in dispute over € 50,000.00 final judgement shall be given according to the Arbitration Rules of the German Institution for Arbitration (DIS, registered association) without recourse to the ordinary courts of law. With an amount in dispute up to and including € 250,000.00 a single arbitrator shall decide, and with an amount in dispute of over € 250,000.00 a court of arbitration consisting of three persons shall decide. The amount in dispute when filing a lawsuit shall be decisive, a subsequent increase or decrease of the amount in dispute does not affect the jurisdiction of the court seized. The place of jurisdiction of the court of arbitration shall be the location of the place of business of the Purchaser. The language of the court of arbitration shall be German, unless the contract has been written in another language. Then this language shall be the language of the court of arbitration.
- 14.3 The business relationship between the Supplier and the Purchaser shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the United Nations Convention on the International Sale of Goods (CISG) of 11 April 1980.
- 14.4 Should specific provisions of these GTC-P or any provision in the framework of other agreements be or become fully or partially invalid, then such invalidity shall not affect any other term or provision of the agreement. The parties shall in good faith negotiate on replacing the invalid provision with a valid one which most closely approximates the commercial purpose pursued by the invalid provision.

#### **15. Data privacy**

The contractual parties undertake that personally related data are only used in the framework of statutory regulations.