

# General Conditions of Purchase of DATA MODUL Aktiengesellschaft Produktion und Vertrieb von elektronischen Systemen (as of June 2019)

## 1. Scope of Applicability, Form

- 1.1 These General Conditions of Purchase ("GCP") shall apply to all business relations with our business partners on the supply side and suppliers ("Supplier").
- 1.2 The GCP apply in particular to contracts for the sale and/or delivery of movable things ("Goods"), irrespective of whether the Supplier manufactures the Goods himself or purchases them from his suppliers (paras. 433, 650 German Civil Code). Unless otherwise agreed upon, the GCP shall apply in the version valid at the time of our order, or in any case in the version last communicated to the Supplier in text form, also for similar future contracts, without us having to refer to them again in each individual case.
- 1.3 The GCP shall only apply if the Supplier is an entrepreneur (para. 14 German Civil Code), a legal person under public law or a special asset under public law. These GCP are exclusive. Deviating, contradictory or additional general terms and conditions of the Supplier shall only become part of the contract if and to the extent that we have expressly agreed to their application in writing. This requirement of consent shall apply in all cases, for example even if we - in full knowledge of the Supplier's general terms and conditions - accept the Supplier's deliveries without reservation.
- 1.4 Individual agreements with the Supplier made on a case-by-case basis (including side agreements, additions and amendments) shall take precedence over these GCP. A written agreement or our written confirmations shall be decisive when determining the contents aforementioned agreements, unless the contrary can be proven.
- 1.5 Legally relevant declarations and notifications of the Supplier with regard to the contract (e.g. setting of a period for performance, warning notice, revocation) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal form requirements shall remain unaffected.
- 1.6 The statutory provisions shall apply insofar as they are not directly amended or expressly excluded by these GCP.

## 2. Contract Conclusion

- 2.1 Our order is binding at the earliest upon written submission or confirmation. The Supplier must notify us of obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion prior to acceptance.
- 2.2 Insofar as our orders do not expressly contain a binding period, we shall be bound by it two (2) weeks after the date of our offer.

## 3. Delivery Time and Default

- 3.1 The delivery times or delivery dates stated by us in the order are binding. If neither delivery times nor delivery dates are specified in the order and have not been otherwise agreed upon, the delivery time shall be two (2) weeks from the conclusion of the contract. The Supplier is obliged to inform us immediately in writing if it is likely that he will not be able to meet the agreed delivery times or delivery dates, for whatever reason. Deliveries before expiry of the agreed delivery time or before the agreed delivery date are not permitted without our written consent.
- 3.2 If the Supplier is in default, we may - in addition to further legal claims - demand a blanket compensation for the damage resulting from this default amounting to 1% of the net price per completed calendar week, but no more than a total of 5% of the net

price of the Goods delivered late. We reserve the right to prove that we incurred a higher damage. The Supplier may prove that no damage at all or only considerably less damage has been incurred.

## 4. Performance, Delivery, Passing of Risk, Default in Acceptance

- 4.1 Without our prior written consent, the performance owed by Supplier may not be performed by third parties (e.g. subcontractors). The Supplier shall bear the procurement risk for his services, unless otherwise agreed in individual cases.
  - 4.2 The Supplier must notify us about changes in the type or composition of the processed material or in the constructive execution compared to earlier similar deliveries and performances prior to the start of production. Changes and corrections in the scope of performance and in the type of performance, in particular those requested by us for reasons of technical progress or safety aspects, shall be implemented by the Supplier without surcharge insofar as this can be reasonably expected of the Supplier and can be carried out without considerable additional costs.
  - 4.3 Unless otherwise agreed upon, all deliveries shall be made DAP at the specified place of destination in accordance with Incoterms 2010. The respective place of destination shall also be the place of performance for the delivery and any cure (obligation which debtor has to perform at creditor's address).
  - 4.4 A packing slip or delivery note stating the date (of issuance and shipping), contents of the delivery (article number and quantity) and our order reference (date and number) must be enclosed with the delivery. If the packing slip or delivery note is missing or incomplete, we are not responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same contents shall be sent to us separately from the packing slip or delivery note.
  - 4.5 The risk of accidental destruction and accidental deterioration of the Goods shall pass to us upon delivery at the specified place of destination. If and insofar as acceptance has been agreed upon, the aforementioned risk shall pass upon acceptance and the statutory provisions governing contracts to produce a work shall apply accordingly.
  - 4.6 The statutory provisions shall apply to the occurrence of our default in acceptance. However, the Supplier must also expressly offer performance to us if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default in acceptance, the Supplier may demand reimbursement for his additional expenses in accordance with the statutory provisions (para. 304 German Civil Code). If the contract relates to a non-fungible thing to be manufactured by the Supplier (individual manufacture), the Supplier shall only be entitled to further rights if we have agreed to cooperate and are responsible for the failure to cooperate.
- ## 5. Prices and Terms of Payment
- 5.1 The price stated in our order is binding. Unless otherwise agreed upon, all prices are exclusive of statutory value added tax.
  - 5.2 We pay within 14 calendar days of complete delivery and performance (including any agreed acceptance) as well as receipt of a proper invoice with 2% discount or, alternatively, the net price within 30 calendar days. In case of bank transfers, payment shall be deemed to have been made in due time if our transfer order is received by our bank before expiry of the payment period. The

invoice is deemed to be proper if it contains the exact order data and is accompanied by two copies clearly marked as such. It is not permitted to combine several orders in one invoice.

5.3 We do not owe commercial maturity interest pursuant to para 535 German Commercial Code or maturity interest pursuant to para. 641 (4) German Civil Code. In the event of default in payment, we shall owe default interest in the amount of five (5) percentage points above the basic rate of interest pursuant to para. 247 German Civil Code.

5.4 The Supplier shall have a right to declare set-off or retention only if the counterclaims are finally and non-appealably established or are uncontested.

## **6. Termination, Suspension**

6.1 Irrespective of the statutory rights of revocation and termination, we shall be entitled to revoke or terminate the contact with immediate effect if the Supplier culpably ceases delivery, if his financial situation deteriorates to such an extent that the delivery is at risk, if an application for insolvency proceedings has been made or if he fails to meet his payment obligations.

6.2 We are entitled at any time and without immediate justification to demand from the Supplier the temporary suspension of partial or complete performance. Upon request, we shall subsequently inform the Supplier of the reasons and the probable duration of the suspension.

6.3 In the event of a suspension of more than three (3) months, the Supplier shall be entitled to claim compensation for the actual costs incurred as a result of the delay, but not for loss of profit. For this compensation of costs, the Supplier shall state the costs resulting from the delay in detail.

## **7. Confidentiality and Retention of Title**

7.1 We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents and all information made available in the course of the order shall be kept secret from third parties, even after termination of the contract. The confidentiality obligation shall not expire until and to the extent that the knowledge contained in the documents provided or the information has become generally known. The Supplier must oblige any third parties whom he engages with our consent for performance to maintain confidentiality at least to the same extent.

7.2 Above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for manufacture. The Supplier must keep such items - as long as they are not processed - separately and marked as our property at his own expense and insure them to an appropriate extent against destruction and loss, but in any case against fire, water and theft damage. Unless otherwise agreed, the contracting parties shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in the objects manufactured by the Supplier or to improper use by the Supplier, its employees or other vicarious agents, they shall be borne solely by the Supplier. The Supplier shall notify us immediately of any not merely insignificant damage to these tools and models. Upon request, he shall be obliged to return them to us in proper condition if no longer requires them for the performance of the contracts concluded with us.

7.3 Any processing, intermixture or combination (further processing) of items provided by us by the Supplier shall be carried out on our behalf. The same applies to further processing of the deliv-

ered goods by us, so that we are deemed to be the manufacturer and acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

7.4 The transfer of ownership of the Goods to us must take place unconditionally and regardless of the payment of the price. If, however, we accept an offer for transfer of ownership by the Supplier subject to the condition precedent that the purchase price is paid, the Supplier's retention of title shall lapse at the latest upon payment of the purchase price for the delivered Goods. In the ordinary course of business, we shall remain authorised to resell the Goods even before payment of the purchase price. Thereby all other forms of retention of title, in particular any extended retention of title, a transferred retention of title and a retention of title extended to further processing are excluded.

## **8. Defective Delivery**

8.1 The statutory provisions shall apply to our rights in the event of material or legal defects of the Goods and in the event of other breaches of duty by the Supplier, unless otherwise specified below.

8.2 The product descriptions which have been made are the subject matter of the respective contract - in particular by naming or reference in our order - or which have been incorporated into the contract in the same way as these GCP shall in any case be deemed to be the agreed quality of the Goods. The origin of the product description is irrelevant.

8.3 The Supplier shall at all times observe all laws, regulations, rules and ordinances (in particular with regard to fair working conditions, equal opportunities and compliance with environmental and environmental protection requirements) that apply to him. The Supplier shall ensure that the Goods delivered by him meet all relevant requirements for placing on the market in the European Union and the European Economic Area. Upon request, he shall provide us with evidence of conformity by submitting suitable documents. The Supplier shall make reasonable efforts to ensure that his subcontractors comply with the obligations contained in this Clause 8.3 which apply to the Supplier.

8.4 In deviation from para. 442 (1) sentence 2 German Civil Code, we shall also be entitled to claims for defects without restriction if the defect remained unknown to us as a result of gross negligence when the contract was concluded.

8.5 The statutory provisions (paras. 377, 381 German Commercial Code) shall apply to the commercial obligation to inspect and give notice of defects (paras. 377, 381 German Commercial Code) subject to the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external inspection including the delivery documents (e.g. transport damage, wrong and short delivery) or which are identifiable during our quality inspection by random sampling. If acceptance has been agreed, there shall be no commercial obligation to inspect. In all other respects it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Irrespective of our obligation to examine, our complaint (notice of defects) shall be deemed to be immediate and timely if it is sent within five (5) working days of discovery.

8.6 Cure shall also include the removal of the defective Goods and reinstallation of non-defective Goods insofar as the Goods have been installed in another item or attached to another item in accordance with their nature and intended use; our statutory claim to compensation of corresponding expenses shall remain unaffected. The expenses necessary for the purpose of inspection and cure shall be borne by the Supplier even if it turns out that

no defect actually existed. Our liability for damages in the event of an unjustified demand to remedy defects shall remain unaffected; in this respect, however, we shall only be liable if we have recognised or by gross negligence have failed to recognise that no defect existed.

- 8.7 Irrespective of our statutory rights and the provisions in Clause 8.6, the following shall apply: If cure - at our choosing by remedying the defect (rectification) or by supplying a thing free of defects (replacement delivery) - by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damages), no deadline needs to be set; we shall inform the supplier of such circumstances immediately, if possible in advance.

## **9. Recourse Claims against a Supplier**

- 9.1 We are entitled to our statutory recourse claims within a supply chain (recourse claims against a supplier pursuant to paras 445a, 445b, 478 German Civil Code) in addition to the defect claims.
- 9.2 Before we acknowledge or fulfil a claim for defects asserted by one of our customers, we shall notify the Supplier and - briefly explaining the facts of the case - request a written statement. If a substantiated statement does not follow within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be legally owed to our customer. In this case, the Supplier shall bear the burden of proof for the contrary.
- 9.3 Our claims arising from a recourse claim against a supplier shall also apply if the defective Goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

## **10. Producers' Liability**

- 10.1 If the Supplier is responsible for product damage, he shall indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organisation and the Supplier himself is liable vis-à-vis a third party.
- 10.2 In connection with his obligation to indemnify, the Supplier shall compensate expenses pursuant to paras. 683, 670 German Civil Code or pursuant to paras. 830, 840, 426 German Civil Code which result from or in connection with a claim by third parties, including recall actions carried out by us. We shall inform the Supplier - as far as possible and reasonable - of the content and scope of recall measures and give an opportunity for him to comment. Further statutory claims remain unaffected.
- 10.3 The Supplier shall conclude and maintain an appropriate product liability insurance. The Supplier shall provide us with a copy of the liability policy at any time upon request.

## **11. Commercial Property Rights**

- 11.1 In accordance with Clause 11.2, the Supplier warrants that no trademarks or copyrights (commercial property rights) of third parties in countries of the European Union, the USA, the People's Republic of China, the Republic of China (Taiwan) and other countries in which he manufactures Goods or has the Goods manufactured are infringed by Goods supplied by him. The same shall apply to a country to which the delivery is to be finally shipped if this country has been communicated to the Supplier prior to conclusion of the contract.
- 11.2 The Supplier is obliged to indemnify us against all claims brought against us by third parties due to the infringement of property rights referred to in Clause 11.1 and to reimburse us for all necessary expenses in connection with such claims. This shall not apply to the extent that the Supplier proves that he is neither responsible for the infringement of property rights nor that he - applying the due care of a prudent merchant - ought to have known

of the infringement of property rights. Our further statutory claims due to legal defects of the Goods delivered to us remain unaffected.

- 11.3 Ownership and the rights to all designs, drawings, calculations, specifications, software and other documents created for us by the Supplier shall pass to us irrespective of form. The Supplier undertakes to ensure that all copyrights and ancillary copyrights in such documents are transferred to us. Insofar as a transfer is not legally possible, the Supplier hereby grants us the exclusive and spatially, temporally and content-wise unlimited right of use to the aforementioned rights.
- 11.4 If the Supplier or his employees make inventions, discoveries or further developments (hereinafter collectively referred to as "inventions") in the course of their work under the contract, the Supplier shall inform us immediately of such inventions. The Supplier hereby assigns these inventions to us. Insofar as the inventions are patentable in whole or in part, the Supplier shall, after consultation with us, make unlimited use of his employees' inventions and also assign them to us. In addition, he must provide us with all necessary information when first registering the respective industrial property right. If the Supplier's employees have statutory or other claims to remuneration in connection with these inventions, any claims shall be borne by the Supplier.

## **12. Limitation**

- 12.1 The mutual claims of the parties to the contract shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- 12.2 Deviating from para. 438 (1) no. 3 German Civil Code, the general limitation period of claims for defects shall be 3 years from the transfer of risk. If acceptance has been agreed upon, the limitation period shall commence with acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from legal defects, whereby the statutory limitation period for claims in rem for surrender by third parties (para. 438 (1) no. 1 German Civil Code) shall otherwise remain unaffected; furthermore, claims arising from legal defects shall not become statute-barred under any circumstances as long as the third party can still assert the right in question against us, in particular in the absence of a limitation period.
- 12.3 Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (paras. 195, 199 German Civil Code) shall apply, unless the application of the limitation periods of the law on sales in individual cases results a longer limitation period.

## **13. Choice of Law and Venue**

- 13.1 These GCP and the contractual relationship between us and the Supplier shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 13.2 If the Supplier is a merchant within the meaning of the German Commercial Code, a legal person under public law, a special asset under public law or an entrepreneur within the meaning of para. 14 German Civil Code, the exclusive - also international - venue for all disputes arising from or out of the contractual relationship shall be Munich, Federal Republic of Germany. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GCP or of a prior individual agreement or at the general venue of the Supplier. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.