

## Terms and Conditions of Purchase

### PIA Automation Amberg GmbH, Amberg

### PIA Automation Bad Neustadt GmbH, Bad Neustadt

(Date: 1/1/2018)

**These Terms and Conditions of Purchase shall only apply in relation to merchants, legal entities subject to public law and trustees of public funds.**

#### 1. General

- 1.1 Our Terms and Conditions of Purchase shall apply exclusively. Any general terms and conditions of business presented by the supplier which conflict with or deviate from these Terms and Conditions of Purchase shall only be accepted by us if expressly agreed to by us in writing. The unconditional receipt of goods or services from the supplier (hereinafter: object of the contract) or payment thereof shall not be implied to constitute acceptance.
- 1.2 We require our suppliers to operate a certified quality management system in accordance with EN ISO 9001. If the supplier is not certified accordingly, he shall inform us, without prompting, of this fact immediately and no later than the negotiation and offer stage.

#### 2. Conclusion of the contract and amendments to the contract

- 2.1 Declarations of intent of any kind such as offers, acceptances, delivery requisitions and unilateral legal transactions must be made in writing. The same shall apply to amendments and supplements to such declarations.
- 2.2 Verbal declarations of intent and any other verbal agreements of any kind – including retrospective amendments and supplements to these Terms and Conditions of Purchase – require our written confirmation to be valid.
- 2.3 The requirement for the written form can also be met by email or fax.
- 2.4 Offers and cost estimates shall be binding and shall not be remunerated, unless agreed otherwise in writing.
- 2.5 Orders placed without a price or just with a guide price shall be deemed to be a request for the supplier to submit an offer, which requires confirmation in writing from us. The simple receipt of a delivery or service shall not constitute the acceptance of any such offer.
- 2.6 All prices are net prices to which statutory value added tax must be added at the applicable rate. Agreed prices are fixed prices.
- 2.7 Our order shall be confirmed by the supplier in the form of order confirmation in writing within five working days (Monday to Friday) after receipt. After this deadline we reserve the right to revoke the order at no charge.
- 2.8 Delivery requisitions within the framework of order and requisition schedules shall be binding for the supplier on receipt. They do not require acceptance or confirmation by the supplier.

#### 3. Delivery

- 3.1 Deliveries deviating from legally binding agreements, in particular partial deliveries, short deliveries and excess deliveries, shall only be permitted subject to prior agreement from us in writing.
- 3.2 Agreed places of destination, dates and deadlines shall be binding. The supplier shall account for all logistical, legal and customs-related requirements and conditions in relation to his scheduling, to ensure timely delivery and/or fulfillment of performance at the named place of destination. In particular, he shall arrange for timely transfer to carriers and freight forwarders.
- 3.3 If the supplier undertakes to carry out installation or assembly work and unless agreed otherwise in writing, the supplier shall be responsible for all required additional expenses such as travel expenses, provision of tools and the costs of his suppliers or third parties. If, at our discretion, we pay a third party for any such costs or expenses in advance in individual cases, these shall be reimbursed to us by the supplier if he has agreed to such reimbursement or if payment is necessary in order to adhere to times for delivery. The supplier shall be entitled – unless he has agreed to a service – to furnish evidence that performance of the service of the type and amount was not necessary for the concrete situation.
- 3.4 In case of delayed delivery, we shall be entitled to demand a contractual penalty of 0.2% of the net order value per working day (Monday to Friday), subject to a maximum of 5% of the net order value. We shall be entitled to apply the contractual penalty up to the time of payment for the goods concerned. This is without prejudice to any further claims in relation to delayed delivery. The supplier's liability for damages encompasses any flat-rate compensation for damages and contractual penalties owed by us to our customers as a result of the delayed delivery, if the supplier has been informed by us about the flat-rate compensation for damages or contractual penalties agreed with the customer.
- 3.5 The supplier shall inform our ordering department immediately if any problems arise in relation to the production, supplies of raw materials, adherence to the time of delivery or similar circumstances which may present a hindrance to timely delivery or delivery in the agreed quality.
- 3.6 Acceptance and payment of the delayed delivery or service shall always be without prejudice to interest on account of delay and compensation for damages to which we are entitled, without explicit notification thereof. Payment in full shall not be deemed to imply the waiver of these rights.
- 3.7 Unless proven otherwise, the quantities, weights and dimensions established during our incoming goods inspection shall be binding. This is without prejudice to the supplier's right to furnish evidence to refute the findings of our incoming goods inspection.
- 3.8 We are entitled to the worldwide, unlimited, transferable right of use to intellectual property, including software, which is intrinsic to the object of the contract or part of the scope of delivery, including associated documentation, within the scope of its intended use. This includes the right to make a backup copy of the software. The supplier gives an assurance that he possess the full right of disposal over the intellectual property which is intrinsic to the object of the contract.

- 4. Force majeure**  
Force majeure, operational disruptions beyond our control, civil unrest, strikes, official measures and other unavoidable events discharge us from our obligation of timely acceptance for their duration. All other rights of the parties, such as withdrawal from the contract, are governed by the law.
- 5. Shipping documents, delivery notes and invoices**  
The supplier shall include the delivery-related particulars given with our orders and delivery requisitions in all shipping documents and delivery notes. The same shall apply to the supplier's invoices. If he fails to do so, we shall not be responsible for the resulting delays in processing. A single copy of the invoice, stating the delivery-related particulars given with our orders and delivery requisitions and any other unique identifiers, shall be sent to the address stated in the order or delivery requisition; it must not be included with the deliveries. The invoices must comply with current valid value added tax requirements.
- 6. ICC Incoterms 2010**  
Unless any other Incoterms clause has been agreed, "DDP named place of destination (ICC Incoterms 2010)" shall apply. If a place of destination is not stated in our order, our registered place of business shall be the place of destination.
- 7. Terms of payment**
- 7.1 Unless agreed otherwise in writing, invoices shall be paid within 14 calendar days with a deduction of 3% discount for early payment, or within 30 calendar days with a deduction of 2% discount for early payment, or within 60 calendar days without any deductions, from the due date of the request for payment and receipt of both the invoice and the goods or service. The date on which our bank receives the bank transfer instruction shall be regarded as the date of payment.
- 7.2 Payments shall not constitute any acknowledgment that the delivery or service is in accordance with the contract. In case of a defective or incomplete delivery or service, we shall be entitled, without prejudice to any other rights to which we are entitled, to withhold payments for claims deriving from the business relationship up to a reasonable amount until proper fulfillment has been completed. This is without prejudice to any other rights of set-off and retention.
- 7.3 The supplier shall not be entitled to assign his claims against us or have them collected by a third party without our consent.
- 8. Incoming goods inspection, claims based on defects**
- 8.1 We shall check the goods for any variations in quantity and identity and damage in transit which are apparent from the outside. The time limit for making a claim is ten working days (Monday to Friday) from the date of receipt of the goods or from the date of discovery of defects in the case of hidden defects, whereby the dispatch of the notice within the deadline shall be deemed as valid for the observance of the time limit. In this respect the supplier waives the right of objection due to late notice of defects.
- 8.2 If an additional quality assurance agreement has been concluded with the supplier, the provisions of that agreement shall take precedence over clause 8.1.
- 8.3 Statutory provisions in respect of claims arising due to defects apply. In all cases we shall be entitled to demand that the supplier either remedy the defects or deliver a new object, the choice being at our discretion. We expressly reserve the right to claim compensation for damages, in particular the right to claim compensation in lieu of performance. The supplier shall be entitled to refuse to deliver a new object as demanded by us, if he furnishes proof that repair carried out promptly by him is of the same value to us but would mean significantly lower costs for him. The supplier shall be entitled to refuse to remedy the defects as demanded by us if he promptly delivers a new object without defects.
- 8.4 We shall be entitled, at the supplier's expense, to remedy the defects ourselves or arrange for a third party to remedy the defects if the supplier is in delay with the remedying of the defects, unless the defect was not caused by the supplier.
- 8.5 The supplier guarantees that the delivered goods and the use of those goods shall not infringe any patents, trademarks, utility models or other intellectual property rights belonging to third parties domiciled either in Germany or other countries. The supplier shall indemnify us immediately against all claims of third parties. This shall not apply if and to the extent that the supplier has manufactured the goods in accordance with production materials and documentation stipulated by us and does not know, or in connection with the products developed in accordance with our specifications, cannot know that intellectual property rights are thereby infringed. The contracting parties undertake to inform each other without delay of any risks of infringement and alleged infringements that become known, and to give each other the opportunity to take action to defend against any such claims by mutual agreement.
- 8.6 The limitation period is 36 months from the time of the passing of risk. This is without prejudice to §§ 438 (1) No. 2, 478, 479 BGB (German Civil Code). The statute of limitations shall also be suspended if we notify the supplier of a defect. Suspension shall come to an end in this case when the defect has been remedied in full or if the supplier refuses remedial performance, and the statute of limitations shall commence at the earliest three months after the end of the suspension.
- 8.7 If the supplier remedies a defect in the form of remedial performance, the limitation period recommences for the replaced or repaired object, unless the supplier has recognizably undertaken remedial performance as a goodwill gesture only.
- 8.8 If we are entitled to compensation for damages due to physical or legal defects, we shall be entitled to demand lump-sum compensation amounting to 10% of the net order value, unless the defect was not caused by the supplier. This is without prejudice to our right to assert further claims for damages. The supplier shall be entitled to furnish proof that no damages were incurred as a result of the physical or legal defect, or that the damages incurred were significantly lower than the lump-sum.
- 9. Product liability**
- 9.1 In the event that a product liability claim is asserted against us, the supplier undertakes to indemnify us from such claims at our first written request, provided that the damages was caused by a flaw in the object of the contract delivered by the supplier and the cause was within the supplier's sphere of control and organization.
- 9.2 In the cases of clause 9.1 above, the supplier shall assume all costs and expenses, including the costs of any legal action.
- 9.3 In all other respects, statutory provisions shall apply.
- 9.4 Before any product recall campaign which is wholly or partly the consequence of a defect in the object of contract delivered by him is started, we shall inform the supplier, give him an opportunity to cooperate, insofar as can be reasonably expected from us, and discuss with him the ways of efficient handling of the campaign unless such information or involvement of the supplier is not possible for reasons of urgency. If a

- product recall campaign is the consequence of a defect in the object of the contract delivered by the supplier and the cause was within the supplier's sphere of control and organization, the supplier shall assume the costs of the product recall campaign.
- 9.5 The supplier undertakes to take out product liability insurance with cover of € 10 million for each personal injury/damage to property claim (lump-sum) and to furnish us with proof of the policy on request; this is without prejudice to any further claims for compensation for damages to which we may be entitled.

#### **10. Additional rights of withdrawal and cancellation**

- 10.1 Over and above our legal rights, we shall be entitled to withdraw from the contract with immediate effect, if
- the supplier has stopped supplying to his customers,
  - a significant deterioration in the supplier's financial standing occurs or threatens to occur and the fulfillment of his delivery obligation to us is jeopardized as a consequence,
  - the supplier falls into arrears with payments to more than one business partner, or
  - the supplier is in default with the performance of any obligation in relation to us
- and the circumstance concerned continues even after the expiry of a reasonable extension of time granted by us. In cases of the foregoing nature, we shall also be entitled to cancel continuing obligations without notice.
- 10.2 If an application for the opening of insolvency proceedings or similar proceedings for the settlement of debts is filed against the supplier, we shall be entitled to refuse performance which is incumbent on us until the supplier provides the delivery or service or provides security for it. In all other respects § 321 BGB (German Civil Code) applies. In the case of continuing obligations, the right of withdrawal from the contract shall be replaced by the right of cancellation without notice.
- 10.3 The supplier must inform us without delay if any of the circumstances referred to in clause 10.1 or 10.2 occurs.
- 10.4 If, in relation to clause 10.1 or 10.2, the supplier has completed part of the delivery of goods or services with our agreement, we shall be entitled to withdraw from the contract as a whole if we have no further interest in the partial delivery of the goods or services.
- 10.5 If we withdraw from or cancel the contract on the basis of the foregoing contractual entitlement to withdraw from or cancel the contract, the supplier shall compensate us for any ensuing damages, unless he is not responsible for the underlying circumstances involved.
- 10.6 The provisions in clause 10 above are without prejudice to statutory rights and entitlements.

#### **11. Execution of work**

Persons who carry out work at our business premises in fulfillment of the contract must observe the site rules in each case. Liability for accidents at our business premises in which these persons are involved shall be excluded, unless they were caused by an intentional or grossly negligent breach of duty by our legal representatives and/or persons employed in performing an obligation for us. This exclusion of liability shall not apply in the event of injury to life, body and health or in the event of a breach of fundamental contractual obligations, the breach of which jeopardizes the fulfillment of the contractual purpose. Liability for breaches of obligations due to slight negligence, however, shall be limited to foreseeable damages typical for the contract.

#### **12. Provision of materials**

We shall retain ownership of materials provided by us, such as substances, parts, containers and special packaging, etc. ("Materials"). These may only be used in accordance with their intended use. The processing, combination, intermixture or mingling of materials and the assembly of parts shall be carried out for us. Until the transfer of ownership of the product as a whole manufactured by the supplier to us, we shall be the co-owners of the manufactured products, with our share of ownership being commensurate with the relationship of the value of the provided substances and parts to the value of the product as a whole.

#### **13. Confidentiality and documents**

- 13.1 The supplier shall keep in confidence from third parties all business and technical information made available by us - including features which can be ascertained from the objects, documents or software handed over, and any other knowledge or experience ("Information"), as long as and as far as it is not demonstrably public knowledge. The information may be made available within the supplier's premises only to such persons who must necessarily use it for the purpose of the delivery to us and who likewise are bound to secrecy; it remains our exclusive property in case of physical embodiment and is in all other respects also our intellectual property. Such information may not be reproduced or used for commercial purposes - except for deliveries to us - without our prior agreement in writing. At our request, all information - including any copies made, irrespective of storage type or location or records - and items provided on loan shall be returned to us, destroyed or deleted immediately and completely.
- 13.2 For each case of willful violation of a use restriction or confidentiality obligation in accordance with clause 13.1, the supplier shall be required to pay us a contractual penalty. The amount of the contractual penalty shall be set at our discretion; in all other respects the provisions of § 315 (3) BGB (German Civil Code) shall apply, with the provision that it is without prejudice to any further claims for compensation for damages. However, the contractual penalty shall be credited against such claims for compensation for damages.
- 13.3 We reserve all rights to information and to copyright, intellectual property rights such as patents, utility models, semiconductor protection, design patents, etc., and rights to the registration of intellectual property rights. If the information has been made available to us by a third party, the reservation of rights also applies in favor of such third party.
- 13.4 Products made according to documents drafted by us, (such as diagrams, models and similar), or according to our confidential information, or with our tools or tools modeled on our tools, must not be used by the supplier himself, or be offered or delivered to third parties by the supplier. This shall apply similarly for our print jobs.
- 13.5 The supplier shall only be permitted to mention the name of our company or our trademarks in connection with submitting references or in case of publications if we have previously consented to such in writing.

**14. Export control and customs**

- 14.1 The supplier shall inform us as soon as possible – in case of doubt, at the negotiation and offer stage – of any possible approval obligations for (re)exports of his goods pursuant to the German, European, US export and customs regulations and the export and customs regulations of the originating country of his goods. For this purpose the supplier shall provide at least the following information relating to the relevant items in his product descriptions, technical data sheets, offers, order confirmations and invoices:
- for US goods the ECCN (Export Control Classification Number) pursuant to US Export Administration Regulations (EAR),
  - the country of origin of the goods and the components thereof, including technology and software, including the preference certificate pursuant to the free trade agreement between the country of origin and Germany/the EU where applicable,
  - whether the goods were transported through the USA, were manufactured or stored in the USA or made using US technology,
  - the statistical goods number (HS code) of his goods, and
  - a contact person at his company for the clarification of any queries from us.
- 14.2 The supplier shall notify us on request and in writing of any further export details relating to his goods and their components and notify us immediately (before delivery of the goods concerned) in writing of all changes to those details.

**15. Compliance**

- 15.1 The supplier undertakes to comply with all applicable statutory regulations governing the treatment of employees, environmental protection, and health and safety at work, and to work on reducing the adverse effects of his activities on human beings and the environment. To this end the supplier shall, within his capabilities, set up and develop a management system according to ISO 14001. The supplier shall also observe the principles of the UN Global Compact Initiative relating basically to the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination in recruitment and employment, responsibility for the environment and the prevention of corruption. Further information about the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).
- 15.2 If a supplier repeatedly violates the aforementioned provisions on the rules set out in clause 15.1 above and/or if the supplier does so despite being made aware of such violations and fails to furnish proof that the violation of the rules has been resolved and that adequate precautions to prevent future violations of the law have been taken, we reserve the right to withdraw from any existing contracts or, in the event of any continuing obligations, to cancel any such obligations. This is without prejudice to any claims for compensation for damages to which we may be entitled.

**16. Place of fulfillment for deliveries and services**

The place of fulfillment for deliveries and services shall be the place to which the goods are to be delivered or at which the service is to be provided in accordance with the contract. This place of fulfillment shall also apply in respect of our claims arising due to defects, even if the object of the contract was subsequently transferred to another location, unless such transfer is not in accordance with the intended use.

**17. Severability, applicable law, place of jurisdiction**

- 17.1 The invalidity of any provision in this contract and other concluded agreements shall not affect the validity of any part of the remaining contract.
- 17.2 The laws of the Federal Republic of Germany shall apply exclusively to the legal relationships, to the exclusion of conflict of laws provisions and the UN Sales Convention (CISG).
- 17.3 The place of jurisdiction for all disputes arising directly or indirectly from or in connection with contractual relationships based on these Terms and Conditions of Purchase is either our registered place of business or the registered place of business of the supplier, the choice being at our discretion.