

## **General Terms and Conditions of Purchase and Orders (GTCPO) for Goods, Services, or Similar Items of CE cideon engineering GmbH & Co. KG** (Status: June 01, 2021)

### **1. Conclusion of the contract, cancellation, written form, secrecy, prohibition of sub-contracting, changes to the object of the order**

- 1.1 The legal relationships between the Supplier and CE cideon engineering GmbH & Co. KG -hereinafter referred to as CE – CE are based exclusively on these terms of purchase and on any other written agreements. The Supplier's Standard Terms and Conditions shall not apply. Acceptance by CE of the delivery/service without an explicit objection shall not be deemed as acceptance, by CE, of the Supplier's terms of delivery. Deliveries within the meaning of these terms of purchase shall be both deliveries of goods and contracts for work and services.
- 1.2 If a confirmation of the Contractor to the order of CEN is made with modified conditions, the silence of CEN shall not be considered as an acceptance of the modified offer. . In this case the contract will not be concluded. If the Supplier renders his services, the Supplier does so at his own risk. The Supplier must expect to bear the costs of the repudiation including the return of its goods or services.
- 1.3 Until withdrawn by CE, these terms of purchase shall apply to all future contractual relationships with the Supplier. Agreed deviations shall apply only to the order for which they were confirmed in writing.
- 1.4 Only orders that are issued or confirmed in writing shall be legally binding. This shall also apply to oral side agreements or subsequent amendments to the contract. Verbal agreements are only binding upon a following written confirmation by CE. If the Supplier does not accept the order in writing within ten working days of receipt CE may cancel the order.
- 1.5 The Supplier agrees to treat as commercial secrets the conclusion of the contract and all non-publicised commercial or technical details that it becomes aware of through the business relationship. Any referral of the contract to third parties as a reference shall require CE's prior approval in writing. Subsuppliers must be subjected to the same obligations. If the Supplier discovers that information that is to be kept secret has been made available to an unauthorised third party or that a document that is to be kept secret has been lost, it shall inform CE of this without delay. The obligation to secrecy shall also apply after the contract has been wound up. It shall only expire if and so far as the production knowledge contained in the documents that were handed over has become generally known.
- 1.6 The Supplier shall not be entitled to sub-contract the order or essential parts of it to third parties without CE's prior approval in writing.
- 1.7 CE may request changes to the object of the order even after the conclusion of the contract insofar as this is acceptable to the Supplier. The provisions of the contract shall be amended appropriately in such cases.

### **2. Articles of Sale, Service**

- 2.1 CE's order is authoritative regarding the scope, kind and content of the delivery or service.
- 2.2 Designs, descriptions, plans inter alia, which belong to the order, are binding for the Supplier. The Supplier must inspect said documents for possible discrepancies upon receipt and immediately inform CE in writing regarding any said discrepancies. The Supplier is solely responsible for his own designs, descriptions, plans inter alia, when these are confirmed by CE.

- 2.3 Upon ordering devices or systems or components or assemblies as well as services, the Supplier must include the corresponding device documents, instructions, replacement part lists, circuit diagrams, dimensional drawings, tool lists, catalogs, especially the operating and maintenance instructions as well as the maintenance manual and similar documents of the delivery. Three paper copies of all pertinent documents must be provided as well as in usual media forms free of charge, unless an express written agreement states otherwise.

### **3. Offers**

- 3.1 Offers of the Supplier must be tendered non-binding and free of charge for CE. Deviations between the Supplier's offer and CE's request must be clearly acknowledged in writing.
- 3.2 Drawings, models, prototypes and other documents, which are made available to the Supplier or made to CE's specifications by the Supplier, are only allowed to be used for the processing of the offer for CE and for the execution of the ordered delivery and/or service for CE. These are to be immediately returned free of charge upon demand at any time upon completion of CE's request or at the latest upon execution of the ordered delivery or services.

### **4. Prices, shipping, packaging**

- 4.1 The agreed prices are fixed prices and are to be understood as net prices including the currently valid value added tax (VAT). The prices are to include the compensation for all transferred deliveries and services of the supplier with this order and exclude all types of additional demands. In case of deliveries all prices are understood to be DDP (Delivery Duty Paid, Incoterms®2020) to the destination set out in the purchase order including packaging.
- 4.2 The Supplier is liable for all suitable packaging.
- 4.3 The order number is to be clearly indicated on all shipping and delivery documents. In the case of improper shipping and delivery documents, CE is entitled to refuse receipt of delivery and the Supplier must bear said costs.
- 4.4 In the exceptional case that there is a written agreement for the separate compensation of packaging, CE reserves the right to return reusable packaging material used in the shipment to the address of the supplier upon invoice credit of two thirds of the value of packaging.
- 4.5 Delivery must be made to the specified or agreed upon recipient address. Deliveries, for which CE must partially or entirely bear the shipping costs according to agreement, must be delivered according to the cheapest method of shipping and at the lowest priced shipping rates for CE.
- 4.6 All deliveries shall be notified to CE without delay after shipping by means of an advice of shipment which shows exactly the type, quantity and weight. Advices of shipment, bills of freight, invoices and all correspondence must show CE's order number.
- 4.7 Deliveries ahead of schedule, excess deliveries, deliveries of less than the full amount or partial deliveries shall require CE's prior approval in writing. In the case of agreed partial deliveries the remaining balance must be shown.
- 4.8 Shipping shall take place pending delivery to the destination indicated by CE at the sole risk of the Supplier.

### **5. Documents, safety devices, industrial property rights**

- 5.1 Storage, assembly and operating instructions and any necessary safety devices shall be provided free of charge. This shall

also apply to documents that are required for the maintenance and repair of the delivery item.

- 5.2 The Supplier shall furnish documentary evidence of origin requested by CE with all the necessary data, duly sign it and make it available free of charge without delay.
- 5.3 Implementation records, in particular drawings, jigs and fixtures, tools, models, etc., which CE handed to the Supplier for the implementation of the order, or which were made in accordance with CE's instructions or paid for by CE, shall remain the property of CE. The Supplier may only use them for the contractually agreed purposes and they may only be made accessible to third parties with CE's written approval. After the order has been carried out the above-mentioned items shall be returned to CE without exception.
- 5.4 The Supplier guarantees that all deliveries are free of the proprietary rights of third parties and that in particular the industrial property rights, licences and copyrights or other patent rights of third parties are not infringed by the delivery and use of the delivery items.
- 5.5 The Supplier is obligated to exempt CE for any third party claimed legal violations and to compensate any resulting expenses.
- 5.6 CE shall have the right to obtain from the rightful owner at the Supplier's cost the approval to use the delivery items concerned.
- 5.7 The Supplier shall not be entitled to make use of CE's trade name, logos or trademarks for its own benefit or that of third parties. Without CE's prior written approval, the Supplier may not use these either individually or in combination with its own trade name, trademarks or logos. If CE grants its approval the Supplier shall strictly comply with the instructions with regard to size, positioning and layout of the trade name, trademarks or logos.

## **6. Transfer of Risk**

The risk, also the risk of accidental loss or accidental deterioration of the goods, also during shipping, shall be only transferred to CE with the complete delivery and hand over of the ordered goods, and/or the written acceptance of the company, and/or the the written confirmation of an employee of CE. If the services include delivery and installation, the risk is first transferred to CE after completion of the installation and written confirmation by an employee of CE. Commissioning and testing of a system does not constitute acceptance of the delivered goods.

## **7. Dates, contractual penalty, withdrawal, substitute performance**

- 7.1 Agreed delivery dates and periods are binding. The receipt of the shipment or the provision of the works and services free of defects at the delivery point indicated by CE, or the successful acceptance in good time, shall be decisive for compliance with such dates and periods.
- 7.2 Delivery and service appointments and deadlines, which are mandated by CE, are binding for the Supplier. CE's prior written consent is required for early deliveries or services as well as partial deliveries and services.
- 7.3 CE reserves the right to adjust the agreed upon delivery or service appointments and deadlines in agreement with CE, in as much as this is required to be taken under consideration of CE and is reasonable for the supplier.
- 7.4 The date of the transfer of risk is deemed to be the date of delivery, in accordance with the provisions of clause 6.

- 7.5 The Supplier is liable to compensate CE for all delivery delay damages, insofar as the Supplier does not prove, that the Supplier must not compensate for said damages.

- 7.6 The acceptance of a delayed delivery or service does not imply a waiver of compensation claims.

- 7.7 If the dates agreed upon are not met due to a situation in which the Supplier is responsible, CE is, upon expiration of CE's determined deadline, entitled to pursue legal claims of CE's choice regardless of proceeding for compensation of damages instead of requesting the fulfillment of the order or to procure a replacement from a third party; the right to terminate the contract remains unaffected.

- 7.8 The Supplier shall notify identifiable delays to deliveries immediately. It may only plead non-compliance with a time limit that is beyond its control if it has notified CE without delay of the reason for this. The Supplier may only rely on the lack of necessary documents to be supplied by CE, if it had sent a written reminder for the documents and did not receive them within an acceptable period.

- 7.9 CE may withdraw from the contract if the delivery or the performance of the work and services are no longer of any use to it, taking into account economic aspects, any delays caused by force majeure or a labour dispute.

## **8. Contractual Penalties, Compensation for Damages, Reimbursement of Expenses**

- 8.1 A contractual penalty shall become due if the Supplier defaults on a contractual date or period. The contractual penalty shall be 0.2 % of the net value of the order per calendar day of the delay, but not exceeding 5 % of the net value of the order; several claims to contractual penalties shall be aggregated. CE reserves the right to claim further damages, whereas the contractual penalty shall be set off against the actual damages resulting from such delay.

- 8.2 The Supplier must also pay a contractual penalty of the same amount as per clause 8.1 in case of culpable quality violation for the time of the notification of defect to the correction of said defect. The basis of calculation here is the affected part of the contractual object of the quality violation.

- 8.3 CE is not obligated to enforce the contractual penalty as need be already at acceptance or delivery or the fulfillment of services, but is entitled to enforce the contractual penalty up to the payment of the final invoice.

## **9. Guarantee, claims under liability for defects, damages, periods for giving notice of defects, warranty period, suspension, new start**

- 9.1 The Supplier guarantees that all deliveries and services are free of material defects and defects to title and will be in conformity with the agreed specifications, however in particular with the latest accepted engineering standards, with any applicable national and international statutory requirements, including any rules and regulations by authorities, trade bodies and professional associations. The Supplier guarantees, that the delivered goods and/or services are free of material, production or design defects, are capable to fulfill normal and/or contractually agreed upon usage which do not reduce the worth of the delivered goods or equipment or services and are technically state-of-the-art at the time of delivery respectively at the time of acceptance. He also guarantees that they correspond to the state of the art at the time of delivery or acceptance. If the Supplier has any misgivings regarding the type of implementation desired by CE it shall inform CE without delay in writing. This is expressly valid for the EU, Germany and the location of the Supplier according to rules and regulations among others for environmental protection laws. The Supplier will

immediately notify CE regarding any pending changes to said laws, rules and regulations. The contractor shall notify CE immediately of any changes of which he is or becomes aware.

- 9.2 Complaints by the delivery of ordered goods are considered to be raised in due time if the Supplier is notified of the obvious defect within 15 days of the receipt of goods and, in case of hidden ones, within 15 days after their discovery.
- 9.3 Following a request by CE, the Supplier shall, without delay and free of charge and including all ancillary costs, remedy defects of the shipment/service or work and services that are the subject of complaints during the defect liability period; such defects shall also include the non-achievement of guaranteed or agreed data and the lack of warranted qualities. CE reserves all current legal rights in case of delivery or performance of services of defective goods and/or service. Especially in case of material defects or legal deviations, CE may require either the remediation of the defect or delivery of product free of defects according to CE's choice.
- 9.4 The Supplier shall in particular bear all expenses in connection with the detection of the defect and its remedy, insofar as these accrue to CE, in particular inspection costs, costs of dismantling and assembling, freight charges, transport costs and the costs of labour and materials. This shall also apply insofar as the expenses are increased because the delivery item was taken to a location other than the place of performance.
- 9.5 If necessary, the Supplier shall carry out repairs or new deliveries in multishift operations or during overtime or on public holidays provided that this is necessary because of CE's existing essential operating reasons and provided that this can be expected of the Supplier. After the second unsuccessful expiry of a reasonable time limit set by CE for repair or a replacement delivery CE shall be entitled to invoke the statutory rights of withdrawal or price reduction. An agreed period for the replacement delivery shall have the same legal effects as a time limit set by CE. If the non-fulfilment or defective performance is limited to a definable part of the service, the withdrawal may be limited to this part insofar as CE has the right to withdraw from the contract and the remainder of the contract remains in force. CE reserves the right to claim damages in all cases.
- 9.6 In the event of material defects, following the unsuccessful expiry of a time limit set by CE for replacement of deliveries pursuant to § 637 of the German Civil Code (BGB), CE shall also be entitled with contracts of sale and purchase to render the performance itself and to obtain an advance payment. If the Supplier fails to comply with its obligations under liability for defect within a reasonable time limit set by CE, CE may carry out the necessary measures itself or have them carried out by third parties. In urgent cases following agreement with the Supplier, CE may carry out the repair or have it carried out by a third party. CE may remedy minor defects without prior agreement in fulfilment of their obligation to minimize loss without this leading to a reduction of the Supplier's obligations arising from liability for defects. CE may then charge the Supplier for the necessary expenditure. This shall also apply if unusually severe damage or heavy losses are imminent.
- 9.7 Insofar as no other agreements are reached, guarantee claims of CE expire after two years from the acceptance of risk or from the point in time in which the defect is discovered, insofar as this event is within the legal guarantee claim period of two years or three years at the longest after the delivery by the Supplier. If the delivered product is used within its normal manner of use for construction and such caused defectiveness of said structure within the guarantee claim period, the guarantee claim period of CE expires after five years from the point of risk acceptance. As soon as the Supplier has assumed the guarantee for the quality of goods or equipment in the form of an assurance, the supplier is liable for the legal right of damage compensation, including damage compensation instead of fulfillment. The expiration deadline is 36 months, calculated from

the discovery of the defect or the absence of the respective quality.

- 9.8 For deliveries or parts thereof which cannot be used by CE during the period in which the defect is examined and/or remedied the current guarantee period shall be extended by the period of interruption of use. For repairs or replacement deliveries or parts thereof the defect liability period shall commence again after transfer of the risk.
- 9.9 All pending defect claims, especially the right of withdrawal in addition to the compensation for damages due to breach of contract and tort remain unaffected.

## **10. Quality assurance, product liability**

- 10.1 The Supplier shall carry out quality assurance suitable in its type and scope and in accordance with the state of the art and shall provide evidence of this to CE on demand. The Supplier shall conclude an appropriate quality assurance agreement with CE where the latter regards this as necessary.
- 10.2 The factory inspections carried out by the Supplier shall ensure that the deliveries conform to CE's technical specifications.
- 10.3 During production and delivery, CE is entitled to inspect the quality of the utilized materials, the accuracy of dimensions and quantity and any other quality aspects deemed appropriate of the produced parts on the premises of the Supplier and the subcontractors of the Supplier. The Supplier must bear all costs of production control and final inspection with the exception of the personnel sent by CE, insofar as no other regulations or agreements are valid. The Supplier agrees to make records of all inspections and tests carried out and to file all test, measuring and inspection results for ten years. CE may inspect these documents at any time and make copies.
- 10.4 Production control documents and inspections according to clause 9.1 do not release the Supplier from obligation fulfillment and do not exclude any claims of defects.
- 10.5 Unless otherwise agreed the Supplier shall mark the delivery items in such a way that they are permanently recognizable as its products.
- 10.6 If claims are made against CE for a breach of official safety regulations or under German or foreign product liability regulations or statutes because of defectiveness of its product that is attributed to the Supplier's goods, CE shall be entitled to demand compensation from the Supplier for the damage insofar as this was caused by products supplied by the Supplier. This damage also includes the costs of a precautionary recall action. As far as this is possible and reasonable CE shall inform the Supplier of the contents and scope of the recall measures and provide the Supplier with an opportunity to comment on such measures.
- 10.7 In addition the Supplier shall obtain adequate insurance against all risks under product liability including the recall risk and, at CE's request, shall submit the insurance policy to it for inspection.

## **11. Invoicing, payment, certificates, rights to withhold, prohibition of assignment, set-off, insolvency of the Supplier**

- 11.1 Unless otherwise requested by CE, the Supplier must issue one copy of any invoice according to current valid law and must send said invoice to CE separate from any delivered goods. The original bill of shipping must be included for every delivery or service. Invoices and bills of shipping must contain information, which allows for orderly booking. This especially includes the order number and date, CE's material and/or request number, the number of units belonging to a delivery, weights, etc..

- 11.2 Payment will be issued within 14 days upon complete receipt of CE's goods or complete delivery of the performance less 3% cash discount and net within 30 days upon receipt according to valid law in compliance with invoicing, but not before receipt of goods or delivery of complete services and the necessary acceptance and receipt of agreed documentation by CE. The valid day of payment is the day of transfer from CE's bank account. CE is entitled to partial payment upon agreement with the Supplier. Discounts shall also apply, if CE sets off or retains payments because of defects; the discount period shall commence after the complete elimination of the defect. Deliveries ahead of schedule (Clause 4.7) shall not affect an agreed date for payment.
- 11.3 CE shall have the right to exercise its statutory rights to withhold payment in the event of incomplete or defective deliveries or provision of the works and services.
- 11.4 The Supplier may not assign its claims against CE or have them collected by third parties without the prior written approval of CE. If the Supplier assigns its claims to third parties or has them collected by third parties in spite of this CE shall have the option of paying the Supplier or the third party with the effect of a discharge.
- 11.5 With the exception of the Supplier being the subject of insolvency proceedings, CE shall have the right to set off any claims brought against the Supplier by any other companies that are affiliated with the Cideon-Group within the meaning of § 15 of the German Companies Act (AktG).
- 11.6 If the Supplier discontinues payments and/or is overindebted or if a petition for the initiation of insolvency proceedings has been made in relation to the Supplier's assets, CE shall be entitled to withdraw from the contract. If CE does not withdraw from the contract, it shall be entitled to withhold an amount of at least 5 % of the net order sum as security for the contractual defect liability claims until the expiry of the defect liability period.

## 12. Compliance

- 12.1 The supplier represents and guarantees that it is and shall remain during the term of this agreement in compliance with all applicable laws, regulations and codes, including but not limited to all anti-bribery laws and regulations. In connection with any aspects of agreements or any other transaction involving CE, the Supplier has not and will not, directly or indirectly, in connection with the performance of services under this agreement or otherwise on behalf of CE, engage in prohibited conduct. Prohibited conduct includes to promise, offer or grant to a person any undue advantage or to request or accept any undue benefit or advantage to improperly influence actions.
- 12.2 The Supplier hereby assumes the obligation to undertake all necessary action in order to ensure that any of its employees comply with all applicable laws and refrain from any illegal activities within their professional activity. The Supplier hereby confirms to CE that neither it nor any of its employees have committed any act in connection with this agreement that may constitute bribery, nor shall the Supplier or its employees commit such acts in the future. The Supplier hereby represents to CE that it shall refrain from all activities, which could constitute a criminal act of fraud, fraudulent breach of trust, criminal offence under insolvency law, criminal offence under unfair competition law, granting of an undue advantage or bribery.
- 12.3 The Supplier hereby represents and warrants to CE that all necessary consents and authorizations have been obtained prior to providing services to CE.
- 12.4 In the event of any violation of the provisions in this clause attributable to the Supplier's fault, CE shall be entitled to

terminate all negotiations with the Supplier, and to terminate all contractual agreements with CE or withdraw from such agreements. In the event that CE is held liable by any third party based on a violation of any undertaking in this clause by the Supplier, the Supplier hereby agrees to indemnify CE from any such claims. In addition, the Supplier hereby agrees to reimburse CE for all damages related to such third party claim.

## 13. Foreign trade

The Supplier shall inform CE immediately, if any deliverable or performance is subject, in whole or in part, to export restrictions under German foreign trade rules, EC-regulations or the terms of international embargos or export restrictions.

## 14. Place of performance

Unless otherwise agreed in writing the place of performance for the obligation to deliver is the delivery location indicated by CE and the registered office of CE for all other obligations of both parties.

## 15. Contract language

The contract language is German. Insofar as the parties to the contract use another language in addition, the German wording shall prevail.

## 16. Legal venue

If the Supplier is an entrepreneur within the meaning of § 310 of the German Civil Code (BGB) the legal venue for all disputes arising from or in connection with the contract shall be the location of CE's registered office. However, CE shall be entitled to bring any suit or legal action in the courts of the Supplier's place of business.

## 17. Supplementary law

This contract and all legal relations arising from it shall be exclusively governed by, and construed in accordance with, the laws of the Federal Republic of Germany without regard to its conflict of laws provisions and the UN Treaty on the International Sale of Goods (CISG) which shall be expressly excluded.

## 18. Final Provision.

- 18.1 Any amendment of, and addition to, as well as the rescission of these GTCs must be in writing in order to be valid. The same shall apply to any agreement setting aside the written-form requirement.
- 18.2 If any of the provisions of this agreement is invalid or becomes invalid at some point in the future that shall in no way have an effect on any of the other provisions. The invalid provision will be replaced by a new and valid provision that reflects the economic intent of the originally invalid provision as closely as possible and that adequately safeguards the interests of both parties.
- 18.3 All previous General Standard Terms and Conditions for services by CE are replaced by these GTCs. These GTCs apply to all CE services that follow the date on which these GSTC become effective.