

## **General Terms and Conditions of Purchase and Contract (AEAB) for the supply of goods and the provision of works and services by CE cideon engineering GmbH & Co. KG (as at 1 June 2021)**

### **1. Conclusion of Contract, Withdrawal, Written Form, Confidentiality, Prohibition on Subcontracting, Amendments to the Subject Matter of the Contract**

- 1.1 The legal relationship between the Contractor (AN) and CE cideon engineering GmbH & Co. KG – hereinafter referred to as CEN – shall be governed exclusively by these Terms and Conditions of Purchase and any other written agreements. The Contractor's general terms and conditions shall not apply. If CEN accepts the delivery or service without expressly objecting, this shall not be construed as CEN having accepted the Contractor's general terms and conditions. Deliveries within the meaning of these Terms and Conditions of Purchase include both the supply of goods and the provision of works and services.
- 1.2 If the Contractor confirms CEN's order with amended terms and conditions, CEN's silence shall not be deemed to constitute acceptance of the amended offer. In this case, the contract shall not be concluded. Should the Contractor nevertheless perform its services, this shall be at the Contractor's own risk. The Contractor must expect its services to be rejected or returned at its own expense.
- 1.3 These Terms and Conditions of Purchase shall also apply to all future contractual relationships with the Contractor until revoked by CEN. Agreed deviations shall apply only to the order for which they have been confirmed in writing.
- 1.4 Only orders placed or confirmed in writing are legally binding. The same applies to verbal side agreements or subsequent amendments to the contract. Verbal agreements are only binding upon written confirmation by CEN. If the Contractor does not accept the order in writing within 10 working days of receipt, CEN is entitled to revoke it.
- 1.5 The Contractor undertakes to treat the conclusion of the contract, as well as all non-public commercial or technical details of which it becomes aware through the business relationship, as trade secrets. Any naming of CEN to third parties as a reference requires CEN's prior written consent. Subcontractors must be bound by the same obligation. Should the Contractor become aware that information subject to confidentiality has come into the possession of an unauthorised third party or that a document subject to confidentiality has been lost, it shall inform CEN of this without delay. The obligation of confidentiality shall remain in force even after the performance of this contract. It shall only cease to apply if and to the extent that the manufacturing know-how contained in the documents provided has become generally known.
- 1.6 The Contractor is not entitled to subcontract the performance of the order, or any substantial parts thereof, to third parties without the prior written consent of CEN.
- 1.7 CEN may request changes to the subject matter of the contract even after the contract has been concluded, provided this is reasonable for the Contractor. In such a case, the terms of the contract shall be adjusted as necessary.

### **2. Scope of supply, service**

- 2.1 The scope, nature and content of the delivery or service shall be governed by CEN's order.
- 2.2 The drawings, descriptions, plans and the like forming part of the order are binding on the Contractor. The Contractor must check these for any discrepancies upon receipt and, in such a case, inform CEN of this in writing without delay. The Contractor remains solely responsible for the drawings, calculations, plans and the like produced by the Contractor

the Contractor shall remain solely responsible, even if these are confirmed by CEN.

- 2.3 When ordering equipment, systems, components, manufactured items or services, the Contractor must provide the relevant equipment documentation, instructions, spare parts lists, circuit diagrams, dimensional sketches, tool lists, brochures, and in particular the operating and maintenance instructions as well as the maintenance manual and similar documents, in triplicate on paper and on standard data carriers, free of charge, unless otherwise agreed in writing.

### **3. Quotations**

- 3.1 Quotations from the Contractor shall be submitted to CEN without obligation and free of charge. The Contractor must clearly highlight in writing any deviations between its quotation and CEN's enquiry.
- 3.2 Drawings, models, samples and other documents made available to the Contractor or produced by the Contractor in accordance with CEN's specifications may only be used by the Contractor for the purpose of preparing the quotation for CEN and for carrying out the ordered delivery or service for CEN. They must be handed over to CEN upon request at any time or following the completion of CEN's enquiry, and at the latest immediately after the delivery or service ordered has been carried out, free of charge.

### **4. Prices, Delivery, Packaging**

- 4.1 The agreed prices are fixed prices and are net prices plus the applicable value added tax. They include payment for all deliveries and services entrusted to the Contractor under this order and exclude any subsequent claims of any kind. In the case of deliveries, unless otherwise agreed, the prices are on a "Delivered Duty Paid" (DDP, Incoterms® 2020) basis to the destination specified in the order, including packaging.
- 4.2 The Contractor is responsible for ensuring suitable packaging.
- 4.3 CEN's order number must be stated on all transport and other accompanying documents. In the event of incorrect shipping and delivery documents, CEN is entitled to refuse acceptance of the delivery at the Contractor's expense.
- 4.4 Insofar as, in exceptional cases, separate remuneration for packaging has been agreed in writing, CEN reserves the right to return reusable packaging materials used for dispatch to the Contractor's address, deducting two-thirds of the value of the packaging.
- 4.5 Dispatch must be made to the delivery address specified by CEN or agreed with CEN. Deliveries for which CEN is required, in accordance with the agreement, to bear all or part of the freight costs must be transported using the cheapest method of dispatch available to CEN at the most favourable freight rates.
- 4.6 CEN must be notified of each delivery immediately upon dispatch by means of a dispatch note, which must be broken down precisely by type, quantity and weight. Dispatch notes, waybills, invoices and all correspondence must include CEN's order number.
- 4.7 Early deliveries, excess, shortfall or partial deliveries require CEN's prior written consent. In the case of agreed partial deliveries, the remaining quantity must be specified.
- 4.8 Until delivery to the destination specified by CEN, shipment shall be exclusively at the Contractor's risk.

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

- 5.1 Storage, assembly and operating instructions, as well as any necessary safety devices, must be supplied free of charge. The same applies to documentation required for the maintenance and repair of the goods supplied.
- 5.2 The Contractor shall immediately provide, free of charge, any certificates of origin requested by CEN, complete with all necessary details and duly signed.
- 5.3 Design documents, in particular drawings, jigs, tools, models, etc., which are made available to the Contractor by CEN for the performance of the contract, manufactured in accordance with CEN's specifications or paid for by CEN, shall remain the property of CEN. They may be used by the Contractor exclusively for the contractually agreed purposes and may only be made available to third parties with CEN's written consent. Upon completion of the contract, the aforementioned items must be returned to CEN without exception.
- 5.4 The Contractor guarantees that all deliveries are free from third-party intellectual property rights and, in particular, that the delivery and use of the delivered items do not infringe any industrial property rights, licence rights, copyright or other intellectual property rights of third parties.
- 5.5 The Contractor undertakes to indemnify CEN against all claims by third parties arising from any alleged infringement of rights and to reimburse CEN for any expenses incurred.
- 5.6 CEN is entitled, at the Contractor's expense, to obtain authorisation from the rights holder to use the relevant goods supplied.
- 5.7 The Contractor is not authorised to use CEN's trade names, logos or trade marks for its own benefit or for the benefit of third parties. Without CEN's prior written consent, the Contractor may not use these either individually or in conjunction with its own trade name, trade mark or logo. If CEN grants its consent, the Contractor must strictly adhere to the guidelines regarding the size, positioning and layout of the trade names, trade marks or logos.

## **6. Transfer of risk**

The risk, including the risk of accidental loss and accidental deterioration of the goods, even in the case of a sale by delivery, shall not pass to CEN until the ordered goods have been fully delivered and handed over, or until the work or service has been accepted in writing by CEN's staff. Where the service is to be performed, including delivery and installation, the risk shall not pass to CEN until installation has been completed and acceptance has been confirmed in writing by CEN's staff. Trial use does not constitute acceptance.

## **7. Deadlines, Contractual Penalties, Withdrawal, Substitute Performance**

- 7.1 Agreed delivery dates and deadlines are binding. Compliance with these is determined by the receipt of the defect-free delivery or the completion of the service at the delivery point specified by CEN, or by the timely and successful acceptance.
- 7.2 The delivery and service dates and deadlines specified by CEN are binding on the Contractor. Early deliveries or services and partial deliveries or services require the prior consent of CEN
- 7.3 CEN reserves the right to adjust agreed delivery dates and deadlines in consultation with CEN's customer, insofar as this is necessary in the interests of CEN and reasonable for the Contractor.
- 7.4 In accordance with the provisions of Clause 6, the date of delivery shall be the time at which the risk passes to the buyer.

- 7.5 The Contractor shall be liable to CEN for compensation for all losses arising from delay, unless it can prove that it is not responsible for them.

- 7.6 Acceptance of a delayed delivery or service does not constitute a waiver of claims for compensation.

- 7.7 If the agreed deadlines are not met due to circumstances for which the Contractor is responsible, CEN shall be entitled, after the expiry of a deadline set by CEN and without prejudice to any further statutory claims, at CEN's discretion, to claim damages in lieu of performance or to procure performance from a third party; the right of withdrawal remains unaffected.

- 7.8 The Contractor must immediately notify CEN of any foreseeable delays in delivery. The Contractor may only invoke a delay for which it is not responsible if it has immediately notified CEN of the reason for the delay. The Contractor may only rely on the failure to provide necessary documents to be supplied by CEN if it has requested the documents in writing and has not received them within a reasonable period.

- 7.9 CEN shall be entitled to withdraw from the contract if, due to a delay caused by force majeure or industrial action, the delivery or the performance of the work is no longer of any use to CEN – taking economic considerations into account.

## **8. Contractual penalty, compensation for damages, reimbursement of expenses**

- 8.1 A contractual penalty shall become payable if the Contractor falls behind schedule in meeting a contractual deadline or time limit. The contractual penalty shall amount to 0.20 per cent of the net contract value per calendar day of delay, up to a maximum of 5 per cent of the net contract value; multiple claims for contractual penalties shall be aggregated in this regard. CEN reserves the right to claim further damages, in which case any forfeited contractual penalty shall be set off against any damages awarded.

- 8.2 In the event of a culpable breach of quality standards, the Contractor shall pay a contractual penalty of the same amount as specified in Clause 8.1 for the period from the notification of the defect until its rectification. The basis for calculation here is the part of the subject-matter of the contract affected by the quality breach.

- 8.3 CEN is not obliged to reserve the right to claim the contractual penalty at the time of acceptance, delivery or performance of the service, but is entitled to claim the contractual penalty up until payment of the final invoice.

## **9. Warranty, claims arising from liability for defects, compensation, notice periods, warranty period, suspension, recommencement**

- 9.1 The Contractor guarantees that all deliveries and services are free from material and legal defects and comply with the agreed specifications; in particular, they must conform to the latest recognised rules of technology and the relevant national and international legal provisions, including the regulations and guidelines issued by public authorities, employers' liability insurance associations and trade associations. The Contractor guarantees that these are free from defects in materials, workmanship and/or design, and free from any defects which would negate or impair their suitability for normal or contractually agreed use, or which would negate the value of the goods, equipment or services supplied. The Contractor further guarantees that they correspond to the state of the art at the time of delivery or acceptance. Should the Contractor have any reservations regarding the method of execution requested by CEN, it must notify CEN of this in writing without delay. This applies in particular with regard to the statutory provisions in force in the EU, in the Federal Republic of Germany and at the Contractor's registered office. The Contractor shall notify CEN without delay of any changes of which it is aware or which come to its attention.

- 9.2 Notices of defects relating to the delivery of ordered goods shall be deemed to have been raised in good time if obvious defects are reported to the Contractor within 15 days of receipt of the goods and, in the case of hidden defects, within 15 days of their discovery.
- 9.3 Defects in the delivery/service or work – which also include failure to achieve guaranteed or agreed specifications and the absence of warranted characteristics – reported during the warranty period must be remedied by the Contractor immediately upon request, free of charge and including all ancillary costs. CEN reserves all existing rights in the event of the delivery or provision of defective goods or services. In particular, in the case of material defects or defects of title, CEN may, at its discretion, demand either the rectification of the defect or the delivery of goods free from defects.
- 9.4 The Contractor shall bear, in particular, all costs incurred in connection with the identification and rectification of defects, insofar as these are incurred by CEN, in particular inspection costs, removal and installation costs, transport, travel, labour and material costs. This shall also apply where the costs are increased by the fact that the goods have been moved to a location other than the place of performance.
- 9.5 The Contractor shall carry out rectification work or replacement deliveries, if necessary, by operating in multiple shifts or by working overtime or on public holidays, provided this is required by CEN for urgent operational reasons and is reasonable to expect of the Contractor. Once a reasonable deadline set by CEN for rectification or replacement has elapsed without success for the second time, CEN shall also be entitled to the statutory rights of withdrawal and reduction. An agreed period for subsequent performance shall have the same legal effect as a deadline set by CEN. Insofar as CEN is entitled to rescind the contract, such rescission may, provided that the non-performance or defective performance is limited to a definable part of the service, be restricted to that part whilst the remainder of the contract remains in force. CEN reserves the right to claim damages in all cases.
- 9.6 In the case of material defects, CEN shall also be entitled, even in the case of sales contracts, to carry out the remedial work itself and to claim an advance payment following the fruitless expiry of a deadline set by CEN for remedial performance in accordance with Section 637 of the German Civil Code (BGB). If the Contractor fails to fulfil its obligations arising from liability for defects within a reasonable period set by CEN, CEN may carry out the necessary measures itself or have them carried out by third parties at the Contractor's expense and risk. In urgent cases, CEN may, following consultation with the Contractor, carry out the rectification itself or have it carried out by a third party. Minor defects may be rectified by CEN itself – in fulfilment of its duty to minimise damage – without prior consultation, without this limiting the Contractor's obligations arising from liability for defects. CEN may then charge the Contractor for the necessary expenses. The same applies where there is a risk of unusually high damage.
- 9.7 Unless otherwise agreed, CEN's warranty claims shall become time-barred within 36 months of the transfer of risk or from the date on which the defect was discovered, provided that this event falls within the statutory warranty period of 2 years, but no later than 3 years after delivery by the Contractor. If the delivered product has been used in accordance with its normal intended use in a building and its defectiveness has given rise to warranty claims, CEN's warranty claims shall become time-barred within 5 years of the transfer of risk. As soon as the Contractor has assumed a guarantee for the quality of an item or a work in the form of an assurance, the Contractor shall be liable in accordance with the statutory provisions for compensation for damages, including compensation in lieu of performance. The limitation period for this is 36 months, calculated from the discovery of the defect or the absence of the relevant quality.
- 9.8 For deliveries or parts thereof which cannot be used by CEN during the period in which the defect is being investigated and/or rectified, the current warranty period shall be extended by the duration of the interruption in use. For rectified or replacement deliveries or parts thereof, the liability period for defects shall recommence from the time of transfer of risk.
- 9.9 All further claims arising from defects, in particular the right to rescind the contract and, in addition, claims for damages in lieu of performance, as well as claims for damages arising from breach of contract and tort, remain unaffected.
- 10. Quality assurance, product liability**
- 10.1 The Contractor shall implement a quality assurance system appropriate to the nature and scope of the work and in line with the state of the art, and shall provide evidence of this to CEN upon request. The Contractor shall conclude a corresponding quality assurance agreement with CEN, insofar as CEN deems this necessary.
- 10.2 The Contractor's in-house inspections shall ensure that the deliveries comply with CEN's technical delivery specifications.
- 10.3 CEN reserves the right to inspect, during manufacture and prior to delivery, the quality of the materials used, dimensional and quantitative accuracy, and the general quality of the manufactured parts at the Contractor's premises and those of its suppliers. The costs of production tests and final inspections shall be borne by the Contractor, with the exception of the costs for personnel seconded by CEN, unless otherwise agreed. The Contractor undertakes to keep records of the inspections carried out and to archive all test, measurement and inspection results for 10 years. CEN is entitled at any time to inspect these documents and to make copies.
- 10.4 Production test records and inspections in accordance with clause 10.3 do not release the Contractor from its performance obligations and do not exclude claims for defects.
- 10.5 Unless otherwise agreed, the Contractor shall mark the goods delivered in such a way that they are permanently identifiable as its products.
- 10.6 If CEN is held liable due to a breach of official safety regulations or on the basis of domestic or foreign product liability regulations or laws because of a defect in its product attributable to the Contractor's goods, then CEN shall be entitled to claim compensation from the Contractor for the damage, in so far as this was caused by the products supplied by the Contractor. Such damage shall also include the costs of a precautionary product recall. CEN shall, as far as possible and reasonable, inform the Contractor of the content and scope of the recall measures to be carried out and give the Contractor the opportunity to comment.
- 10.7 Furthermore, the Contractor shall take out adequate insurance against all risks arising from product liability, including the risk of a recall, and shall, upon request, submit the insurance policy to CEN for inspection.
- 11. Invoicing, payment, certificates, rights of retention, prohibition on assignment, set-off, insolvency of the Contractor**
- 11.1 Unless otherwise required by CEN, the Contractor shall issue invoices in a single copy in accordance with the applicable statutory provisions and send them to CEN separately from the goods. An original delivery note must be enclosed with every delivery or service. Invoices and delivery notes must contain the details necessary to enable proper bookkeeping. These include, in particular, the order number and date, our material or order number, the number of units comprising a consignment, weights, etc.

11.2 Payment shall be made within 14 days of receipt of the full consignment or full performance of the service, less a 3% discount, and within 30 days net of receipt of an invoice complying with statutory requirements, but not before receipt of the goods or full performance of the service and, where applicable, acceptance and receipt by CEN of the agreed documentation. The date of payment shall be the date on which the payment is debited from CEN's account. CEN is entitled to make partial payments in consultation with the Contractor. A cash discount may also be applied if CEN sets off claims or withholds payments due to defects; the cash discount period shall commence once the defects have been fully rectified. Early deliveries (Clause 4.7) shall not affect an agreed payment date.

11.3 In the event of an incomplete or defective delivery or performance of the work, CEN is entitled to exercise its statutory rights of retention.

11.4 The Contractor is not entitled, without CEN's prior written consent, to assign its claims against CEN or to have them collected by third parties. If the Contractor nevertheless assigns its claims to third parties or has them collected by third parties, CEN may, at its discretion, make payment with discharging effect to either the Contractor or the third party.

11.5 CEN is also entitled, vis-à-vis the Contractor – except in the event of the Contractor's insolvency – to set off such claims as are due from the Contractor to other companies of the Cideon Group affiliated with CEN within the meaning of Section 15 of the German Stock Corporation Act (AktG).

11.6 If the Contractor suspends payments and/or is over-indebted, or if insolvency proceedings are commenced in respect of its assets, CEN shall be entitled to withdraw from the contract. Insofar as no withdrawal takes place, CEN is entitled to retain an amount of at least 5 per cent of the net contract sum as security for the contractual claims for liability for defects until the expiry of the warranty period.

## **12. Compliance**

12.1 The Contractor guarantees, in general and for the duration of this contract, compliance with all applicable laws, regulations and rules, including (but not limited to) all anti-corruption laws and regulations. The Contractor has not committed any prohibited acts, either directly or indirectly, in connection with the contractual services provided under contracts or any other services provided to CEN, and shall not do so in future. Prohibited acts include promising, offering or granting, or requesting or accepting, any unauthorised advantage or benefit with the aim of unduly influencing actions.

12.2 The Contractor undertakes to take all necessary steps to ensure that its employees comply with the applicable law in the course of their work and do not commit any criminal offences. The Contractor confirms that neither it nor its employees have accepted or offered bribes in connection with the conclusion or performance of this contract, and that they will neither accept nor offer such bribes in the future. The Contractor undertakes to refrain from any conduct that could lead to criminal liability for fraud or breach of trust, insolvency offences, offences against competition, the granting of undue advantage or bribery on the part of persons employed by it or third parties.

12.3 The Contractor guarantees that it holds all the necessary licences and consents required for its activities.

12.4 In the event of a culpable breach of these provisions, CEN shall be entitled to terminate all negotiations with the Contractor and to withdraw from or terminate all existing contractual relationships with the Contractor with immediate effect. Should CEN be held liable by third parties as a result of a breach of these provisions, the Contractor shall indemnify CEN against all claims and compensate CEN for all losses resulting from such a claim.

## **13. Foreign Trade**

The Contractor shall inform CEN without delay if a delivery or service is subject, in whole or in part, to export restrictions under German foreign trade law, EC regulations or other international embargo and export regulations. In such a case, CEN shall be entitled to withdraw from the contract or the order.

## **14. Place of performance**

Unless otherwise agreed in writing, the place of performance for the delivery obligation shall be the delivery point specified by CEN; for all other obligations of both parties, it shall be CEN's registered office.

## **15. Language of the Contract**

The contract language is German. Insofar as the contracting parties use any other language in addition to this, the German text shall take precedence.

## **16. Place of jurisdiction**

If the Contractor is a trader within the meaning of Section 310 of the German Civil Code (BGB), the place of jurisdiction for all disputes arising from this business relationship shall be CEN's registered office. However, CEN shall also be entitled to bring proceedings before the courts at the Contractor's place of business.

## **17. Supplementary Law**

In addition to these contractual provisions, the applicable law of the Federal Republic of Germany shall apply exclusively. The application of the conflict-of-laws rules under private international law (IPR) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## **18. Final Provisions**

18.1 Any amendments or additions to the subject matter of the contract and these General Terms and Conditions of Business must be in writing to be valid. This also applies to the validity of any waiver of the written form clause or of the written form requirement itself in individual cases.

18.2 The invalidity of one or more provisions of these General Terms and Conditions of Purchase and Order shall not affect the validity of the remaining provisions. The contracting parties shall replace or supplement the invalid or incomplete provisions with appropriate, valid provisions that correspond to the economic purpose of the intended provision.

18.3 All previous General Terms and Conditions of Purchase and Order of CEN are superseded by these AEABs. These AEABs apply to all services provided by CEN from the date of these AEABs.