

## General Terms and Conditions of Procurement (T&Cs) of VENSYS Elektrotechnik

GmbH

(A\_QS\_000\_005\_03 / Date: 30 April 2020)

### § 1

#### Validity of these General Terms and Conditions of Procurement (T&Cs); defence clause

- (1) These General Terms and Conditions of Procurement (T&Cs) apply to all our business relationships with our suppliers, subcontractors and service providers (hereinafter referred to as "Suppliers" in a standard way) for the purchase of goods and other services. The T&Cs shall however only apply if the supplier is an entrepreneur in the sense of § 14 German Civil Code, a public-law entity or a public-law fund.
- (2) Our T&Cs shall apply exclusively even if we place orders without reservation despite knowledge of the supplier's terms and conditions of business, accept supplies or other services or directly or indirectly make reference to correspondence etc. containing its or third parties' terms and conditions of business. Contradictory, deviating or supplementary terms and conditions of business of the supplier shall only be acknowledged by us by us expressly agreeing to their validity in writing.
- (3) Our T&Cs shall apply as amended at the time in question as a framework agreement (§ 305 subsection 3 German Civil Code), also for future quotations by the same supplier and the contracts concluded with it concerning sale and/or supply of mobile objects and/or rendering of miscellaneous services without us having to make reference to them again in each individual case; we shall inform the supplier of changes to our T&Cs in such a case without delay.

### § 2

#### Conclusion and content of contracts; written form; reservation of rights;

- (1) Only our written orders or those confirmed in writing are binding. The supplier can accept our orders within the binding period possibly stated therein, otherwise within three (3) working days (Monday to Friday, notwithstanding statutory holidays, from the order stated therein, by written confirmation to [einkauf@vensys-elektrotechnik.de](mailto:einkauf@vensys-elektrotechnik.de). Punctual receipt of the declaration of acceptance by us shall be decisive. Each declaration of acceptance shall be understood as being unreserved. Delayed declarations of acceptance shall be deemed as new offers.
- (2) To comply with written form in the sense of the present T&Cs, transmission by fax or by e-mail shall suffice.
- (3) Individual contractual agreements shall prevail over the present T&Cs. For proof of the contents, a written contract or our written confirmation shall be decisive.
- (4) We reserve all ownership, copyright and property rights to all documents, materials and other objects (e.g. order documents, plans, diagrams, illustrations, calculations, product descriptions, samples and other physical and/or electronic documents, information and objects) handed to the supplier by us. The supplier may not make them accessible to third parties or notify, exploit, reproduce or amend them per se or with a view to the contents without our prior written agreement. It shall use them exclusively for the contractual purposes and return them to us completely upon request and destroy (or delete) all and any existing (also electronic) copies to the extent that they are no longer needed by it in the ordinary course of business and in accordance with statutory archiving periods. Upon request by us, it shall confirm the completeness of the return or the destruction/deletion or state which of the aforementioned documents, materials and objects it is of the opinion that it still needs them for the aforementioned reasons.

### § 3

#### Amendment rights with a view to scope of performance and product specifications

- (1) We shall be entitled to change delivery time, address and packaging of a supply at any time by a written notification with a period of no less than twelve (12) working days before the agreed delivery date. The same shall apply - with a notification period of one (1) month until implementation by the supplier - to changes of properties (product specifications) and specifications for miscellaneous services, to the extent that they can be implemented within the framework of the normal course of business without considerable additional efforts.
- (2) We shall reimburse the supplier for the proven and suitable additional costs based on the change. If such changes result in delays in supply which cannot be avoided with efforts which can be reasonably expected in the normal course of production and business, the originally planned delivery date shall be postponed accordingly. The supplier shall notify us of the additional costs and delays in supply to be expected in a cautious estimate without delay following receipt of our written notification. The supplier's notification shall be made on the basis of the change information provided by us. The costs shall be reimbursed subject to our prior approval of the terms and conditions contained in the change information and also the additional costs estimated by the supplier.

### § 4

#### "DDP Incoterms (2020)" and other supply modalities; passage of risk; acceptance; arrears in acceptance; lump-sum for damages from arrears

- (1) If not agreed to the contrary, "DDP Incoterms (2020)" shall apply to all suppliers, relative to the delivery address stated in our order or, if none has been expressly stated, to the delivery address of our location ordering in the individual case.
- (2) The delivery time (delivery date or delivery duration) stated in our order or other time regulated in the present T&Cs shall be binding. If no delivery time has been stated in our order and if it has not been agreed in any other way, it shall amount to two (2) weeks from conclusion of the contract. The supplier shall notify us in writing without delay if and for what reason it can prospectively not comply with a delivery time and how long the delay will prospectively last.
- (3) The risk of chance destruction and of chance deterioration of the delivery shall only pass to us with hand-over at the place of performance (§ 17 of these T&Cs). This shall also apply if a sale by dispatch has been agreed as a deviation from subsection (1). To the extent that acceptance has been agreed, risk shall only pass following successful acceptance; the statutory regulations of law of work and services shall apply to the acceptance accordingly. The statutory regulations on passage of risk on account of all and any arrears in acceptance on our part (below, subsection (6)) shall remain unaffected. We shall only accept early supplies by written confirmation of acceptance or when the correct delivery time has been reached (above, subsection (2)). We reserve the right to return early supplies at the supplier's expense, otherwise the goods shall be stored with us or third parties at the supplier's expense until our written confirmation of acceptance or the correct delivery time has been reached. In the case of an early supply, the risk shall remain, even in the event of storage by us or third parties, until written confirmation of acceptance by us or when the correct delivery time has been reached with the supplier.
- (4) If the supplier does not render its service or not within the agreed delivery period or if it falls into arrears, our rights - in particular to withdrawal and damages - shall be based on the statutory directives. In the event of arrears, our claim to liquidated damages pursuant to the following subsection shall be added.

- (5) If the supplier is in arrears, we can - alongside further-reaching statutory claims and performance - demand liquidated payment of our damage from arrears to the amount of 0.5% of the net price of the delayed supply per complete calendar week of arrears, albeit no higher liquidated damages than 3% of the net price of the delayed supply. The right to prove higher damages shall remain reserved for us, the right to prove that no or considerably less damage has been incurred shall remain reserved for the supplier.
- (6) The statutory directives shall apply to our arrears in acceptance, although the supplier must also expressly offer us its service if a time has been or can be determined according to the calendar for an action to be undertaken by us. If we fall into arrears in acceptance, the supplier can demand reimbursement of its additional expenditure according to the statutory directives (§ 304 German Civil Code). If the contract is concerned with an object to be produced by the supplier which is not fungible (§ 651 sentence 3 German Civil Code), further-reaching claims and rights (§§ 642, 643 German Civil Code) shall only accrue to it to the extent that we are obliged to cooperation and are answerable for the omission of the cooperation.

### § 5

#### Prices, invoices, payment modalities and arrears; rights of offset and retention

- (1) The price stated in our order shall be binding and a fixed price. It shall be understood "DDP Incoterms (2020)" (see § 4(1) of these T&Cs) and exclusive of statutory turnover tax.
- (2) To the extent not agreed to the contrary, the price shall include all the supplier's services and subsidiary services (e.g. set-up/fitting, assembly, installation, commissioning, adjustment/setting) as well as all subsidiary costs (e.g. proper packaging, transport, insurance of the goods), taxes (on turnover tax, however, see subsection (1)), customs and other dues. The supplier shall take packaging material back upon our request and at its expense.
- (3) All order confirmations, delivery papers and invoices shall in any case contain our order number, the order date, the article description, supply quantity, the number of our order description and delivery address. If processing is delayed as a result of missing information, our payment period shall be extended by the period of the delay.
- (4) We shall pay without deduction within 30 days of receipt of the complete service and receipt of the final invoice or equivalent list of payments. We shall pay with 3% discount within 14 days of receipt of the complete service and receipt of the final invoice or equivalent list of payments.
- (5) We shall not owe maturity interest (§§ 352, 353 German Commercial Code). Default interest shall be five (5) percentage points per year above the base rate of interest. The statutory directives shall apply to occurrence of our arrears in payment, in which context a written reminder by the supplier shall be necessary in each case as a deviation herefrom.
- (6) Rights of offset and retention as well as the objection of unfulfilled contract (§ 320 German Civil Code) shall accrue to us to the statutory scope. We shall in particular be entitled to withhold payments as long as a claim accrues to us due to incomplete or defective performance from the affected contractual relationship in question; this shall in any case apply to the extent that our withholding of payment would not breach good faith (§ 320, subsection 2, German Civil Code) according to the circumstances, in particular on account of proportionate slightness of the defect or the incompleteness.
- (7) The supplier shall only be entitled to offset and to claim a right of retention to the extent that (a) its counterclaims acting as a basis are either undisputed or legally effective or (b) in the event of claiming in proceedings, is ready for a decision at the time of the last hearing or (c) is ready for the principal claim in the mutuality relationship (synallagma).

### § 6

#### Supplier's retention of title

- (1) Provision of the goods to us shall be unconditional and without regard for our payment of the purchase price.
- (2) If the supplier's retention of title has been agreed in the individual case in contradiction of subsection (1), all the forms of right of retention which have been (a) extended, (b) extended to resale, processing or re-shaping or (c) forwarded have been ruled out, with the result that the right of retention shall only apply until payment for the goods supplied to us in the case in question and only for these goods.

### § 7

#### Property of the products; quality assurance system; traceability

- (1) The supplier guarantees that its products fulfil the statutory directives, the latest state of the art and the agreed product specifications. The product description, which has become the subject matter of the agreement, shall be decisive. Publicly accessible statements of other manufacturers or other third parties shall not be taken into account.
- (2) The supplier shall set up and maintain a documented quality assurance system which is suitable according to its nature and scope and which fulfils the latest state of the art. The supplier hereby expressly agrees that we carry out quality audits to assess the effectivity of its system on its business premises during customary business hours following prior announcement. In addition, the supplier shall, by request, grant us insight into certification and audit reports and into test procedures which have been performed, including all test records concerned with the supply, and provide them to us if necessary.
- (3) The supplier shall ensure traceability of its products at any time. Further, it shall take suitable measures to ensure that, if a defect occurs on one of its products, it can establish without delay which further products may be affected.
- (4) The supplier is obligated towards us to provide the safety data sheet valid for the objects of the contract with supply, to the extent that the current safety data sheet for the object of the contract in question is not available to us. Independent of the supply of objects of the contract, the supplier shall ensure that the current safety data sheet for the objects of the contract already supplied is provided to us. The supplier shall indemnify us against all claims in the event that it does not provide us with the safety data sheets, with a delay or defectively.
- (5) The supplier undertakes to use environmentally friendly products and methods in the contractual objects and also for supplies or subsidiary services of third parties within the framework of the economic and technical possibilities.
- (6) The supplier is liable for the environmental compatibility of the contractual objects and packaging materials and for all subsequent damage caused by a breach of its statutory disposal duties. Upon request by us, the supplier shall issue a property certificate for the contractual objects. Our current packaging directive A\_QS\_000\_001 shall apply.

### § 8

#### Rights with defects in title and quality and other breaches of duty; procurement risk

- (1) The statutory directives and, as a supplement, these T&Cs shall apply to our rights with defects in title and quality of the goods and to other breaches of duty by the supplier, in particular the following regulations and § 9.
- (2) The statutory directives (§§ 377, 381, German Commercial Code) and the regulations in this subsection shall apply to our commercial duty to examination and notification of defects. Our duty to examine shall be limited to defects which are obvious in our examination of incoming goods with an external analysis including the supply papers as well as in our

quality control in random examinations (e.g. transport damage, wrong and short supplies). To the extent that an acceptance has been agreed for certain services, no duty to examination shall exist. Our duty to notification of defects which are discovered later shall remain unaffected.

- (3) In the event of defectiveness of the goods, we can, at our choice, demand subsequent performance in the form of remedying of the defect (after-working) or supply of a defect-free object (replacement supply).
- (4) If the supplier fails to comply with this duty to subsequent performance within a reasonable period set by us, we can remedy the defect ourselves (self-help) and demand reimbursement of the expenditure necessary or a matching advance payment from the supplier. If the subsequent performance by the supplier has failed or cannot be reasonably expected of us due to specific circumstances (e.g. on account of particular urgency, risk to operational safety or threatening occurrence of disproportionately high damage), no - if applicable, repeated - setting of a period shall be necessary; we shall inform the supplier of such circumstances immediately, as far as possible before our self-help.
- (5) The cost expended for the purpose of examination and subsequent performance by the supplier - including all and any costs of dismantling and installation - shall be borne by it even if it is seen that no defect actually existed. Our liability for damages in the event of an unjustified demand of remedying of a defect shall remain unaffected; however, we shall only be liable if we have recognised or have failed to recognise through gross negligence that no defect actually existed.
- (6) The supplier bears the procurement risk for its services to the extent that nothing to the contrary has been expressly agreed (e.g. a duty to keep stocks).
- (7) We do not acknowledge and hereby contradict all any provisions of the supplier limiting warranty or liability.

#### § 9

##### **Breach of third parties' property rights**

- (1) The supplier vouches according to the provisions of subsection (2) for the fact that no third parties' rights in countries of the European Union (EU) and the European Economic Area (EEA), in Switzerland, the USA, Canada or other countries in which it produces the products or has them produced are breached by the products supplied by it.
- (2) The supplier is obliged to indemnify us against all claims which third parties make against us on account of the breach stated in subsection (1) and to reimburse us for all necessary expenditure in connection with these claims. The indemnification duty shall apply to it at first request. The claims according to sentence 1 of this subsection shall not exist to the extent that the supplier proves that it is not answerable for the breach of the property right(s) and ought not to have known about it at the time of the supply in application of due commercial care.
- (3) Our claims on account of defects in title shall remain unaffected apart from this.

#### § 10

##### **Barring by limitation**

- (1) Barring by limitation shall be based on the statutory directives to the extent that nothing to the contrary has been stipulated below.
- (2) The general period for barring for contractual claims on account of defects in title and quality shall be two (2) years from hand-over to us at the place of performance (§ 17 of these T&Cs) if no deviating agreement is made. To the extent that acceptance has been agreed, barring shall always only start upon acceptance in accordance with the periods of barring provided for by law.

#### § 11

##### **Product and producer's liability; product liability insurance**

- (1) If claims are made against us by a third party by way of product and/or producer's liability as a result of personal or property damage and if this damage is to be ascribed to a defective product from the supplier, the latter shall indemnify us from this claim - to the extent that it is liable itself in the external relationship. This indemnification duty shall apply to it at first request.
- (2) If we are obliged to carry out a recall due to the defectiveness of a product from the supplier and the risk for persons and/or property emanating from this product, the supplier shall also bear all the costs of the recall. The right to further-reaching statutory claims shall remain unaffected. We shall inform the supplier as early as possible about the recall measures - to the extent possible and to be reasonably expected - and give it an opportunity of commenting.
- (3) If the supplier has indications for the fact that the recall of one of its products which we have ordered might be necessary, it must inform us about this without delay, stating the reasons.
- (4) The supplier is obliged to maintain a product liability insurance with customary terms and a sum insured of no less than EUR 10 mill. per personal or property damage at its own expense, which however need not cover the recall risk or penal or similar damages. By our request, it shall prove the insurance to us by providing an insurance confirmation and/or other insurance documents. In the event of the supplier also rendering other services for us, it shall be obliged to conclude a third-party liability insurance with terms and conditions comparable with those portrayed in § 11 (4) sentence 1, in particular likewise with a sum insured of no less than EUR 10 mill..

#### § 12

##### **Replacement parts**

- (1) The supplier shall be obliged to stock original replacement parts for the products supplied to us for a period of no less than five (5) years following supply.
- (2) If the supplier decides to cease production of replacement parts for the products supplied to us, it shall notify us without delay. A period of no less than three (3) months must expire between the notification to us and the cessation of production. Subsection (1) shall remain unaffected.

#### § 13

##### **Notification duty in official measures; compliance**

- (1) If official measures take place with or against the supplier in connection with products ordered by us or cases of suspicion of breaches of law which might be put into connection with our contractual relationship, it shall inform us in writing without delay.
- (2) The supplier is obliged to implement a suitable and effective compliance system to avoid breaches of law. In cases of suspicion of breaches of law, the supplier shall be obliged to support us in our own clarification of the cases of suspicion.
- (3) The supplier hereby agrees that we carry out audits on its business premises in the customary business hours following prior announcement in the event of substantiated cases of suspicion.

#### § 14

##### **Specific right of withdrawal in cessation of payment etc.**

In the following cases, we shall be entitled to withdraw from the agreement: (a) the supplier ceases its payment to its creditors; (b) it applies for opening of insolvency proceedings;

(c) the insolvency proceedings against its assets are admissibly applied for by us or by one of its creditors; (d) they are opened -also merely as provisional proceedings; or (e) the application is rejected due to insufficiency of funds.

#### § 15

##### **Ban on assignment, with the exception of monetary claims**

The supplier shall not be entitled to assign its claims against us from the contractual relationship to third parties. This shall not apply to the extent that it is question of monetary claims.

#### § 16

##### **No subcontractors or other third parties**

Without our prior written consent, the supplier shall not be entitled to have services rendered by third parties (e.g. subcontractors).

#### § 17

##### **Place of performance**

The place of performance for all supplies and services is the destination stated by us (that is to say the supply address stated in our order) or, if no such address has expressly been stated, the supply address of our location placing the order in question.

#### § 18

##### **Choice of law and place of jurisdiction**

- (1) The business relationships between us and the supplier shall exclusively be governed by the law of the Federal Republic of Germany. UN purchase law (CISG) shall not apply.
- (2) If the supplier is a merchant, a public-law entity or a public-law fund or if it does not have a general place of jurisdiction in the Federal Republic of Germany, the exclusive - also international - place of jurisdiction for all disputes from the business relationship between us and the supplier shall be our registered office. However, we shall be entitled to sue the supplier at its place of residence or registered office. Cogent statutory provisions concerning exclusive places of jurisdiction shall remain unaffected.

#### § 19

##### **Severability clause**

If provisions of these T&Cs are or become partly or totally ineffective, the validity of the remaining provisions shall not be affected. To the extent that the provisions have not become an integral part of the contract or are ineffective, the contents of the contract shall primarily be based on the statutory directives (§ 306 subsection 2 German Civil Code). Only apart from this and insofar as no supplementary interpretation of the contract prevails or is possible shall the parties find an effective regulation coming commercially as close as possible to the null or ineffective provision in order to replace the latter.

VENSYS Elektrotechnik GmbH