

General terms and conditions of purchase and engagement

**for items, services and similar of CE cideon engineering Schweiz AG (CE)
hereinafter referred to as CE, as of 02.06.2016**

1 Applicability of these terms and conditions of purchase and

- 1.1. We issue orders and engagements exclusively on the basis of these terms and conditions of purchase and engagement. Deviating agreements or general terms and conditions of the Contractor (hereinafter referred to as Contractor) shall only apply if these have been notified to CE in advance with explicit notification and CE has expressly agreed to such. Should the Contractor with reference to its own terms and conditions of purchase and other general terms and conditions of business have accepted the engagement for services which were previously issued by CE with reference to these general terms and conditions of purchase and engagement and should the Contractor then provide performance, this shall be deemed to represent a conclusive agreement on the part of the Contractor to the inclusion and general applicability of the terms and conditions of purchase and engagement of CE.
- 1.2. These general terms and conditions of purchase and engagement shall be accepted by the Contractor at the latest at the time of commencement of the performance of our order.
- 1.3. These general terms and conditions of purchase and engagement shall apply to the purchase of goods, devices, assemblies and similar, as well as to the engagement of services in the form of engineering services and similar.

2 Offers

- 2.1. Offers of the Contractor shall be submitted to CE in a non-binding manner and shall be free-of-charge. The Contractor shall provide express notification in writing should its offer deviate from our enquiry.
- 2.2. The images, models, samples and other documents provided to the Contractor or which are created in accordance with our instructions may only be used by the Contractor for the processing of the order to CE and for the performance of the delivery which has been ordered or for the provision of the service to us. These must be handed over to us immediately and free-of-charge at any time and/or following the completion of our enquiry, at the latest following the performance of the delivery or service which has been ordered.

3 Conclusion of the contract

- 3.1. Only orders which are issued in writing, for example by letter, fax, email shall be binding on us. Oral agreements shall only be binding following written confirmation by us. The same shall apply to amendments and additions to orders.
- 3.2. We expect the order confirmation which conforms fully to our order in terms of content at the latest within 10 days of the date of the order, at the latest 8 days following receipt of the order by the Contractor.
- 3.3. Should the Contractor confirm our order with amended conditions, our silence shall not represent acceptance of the amended offer. In such a case, the contract shall not come into existence. Should the Contractor perform its service anyway, this shall take place at the own risk of the Contractor. It must expect the rejection or return of its services at its own expense.
- 3.4. Regulations of the Contractor concerning a simple reservation of ownership shall not be deemed to represent a deviation from our order and shall be acknowledged by us.

4 Prices

- 4.1. The prices stated by the Contractor shall be fixed prices and are net prices which are subject to the respectively applicable value added tax. These include the remuneration for all deliveries and services which are assigned to the Contractor in relation to this order.
- 4.2. We will only pay for packaging if separate remuneration in this respect has been agreed with the Contractor in writing.
- 4.3. Unless otherwise agreed in writing, deliveries must take place "delivered duty paid" (DDP) to the agreed delivery address in accordance with INCOTERMS 2000, inclusive of packaging.

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5 Object of delivery, service

- 5.1. In relation to the scope, type and content of the delivery or service, our order shall be decisive.
- 5.2. The images, descriptions, plans etc which accompany the order shall be binding on the Contractor. Following receipt, the Contractor must check these for any irregularities and must inform us immediately in writing in such a case. The Contractor shall also remain solely responsible for any images, calculations, plans etc created by it even if these are confirmed by us.
- 5.3. Unless otherwise agreed in writing, the Contractor must provide a complete service which is free from material defects and defects of title. Also without an express agreement, this shall include the technical documentation, inspection certificates, as well as certifications and similar.
- 5.4. In case of the ordering of devices or equipment or components or assemblies, as well as services, the Contractor must include the associated device documents, instructions, lists of replacement parts, wiring diagrams, dimensioned sketches, work tool lists, prospectuses, in particular also the operating and maintenance instructions, as well as the upkeep instructions and similar to the deliver free-of-charge as three paper copies and also on the usual data carriers, unless otherwise agreed in writing.

6 Delivery deadline, delay, liability

- 6.1. The delivery and performance dates and deadlines stated by CE shall be binding on the Contractor. Early deliveries and services, as well as partial deliveries and services shall require our prior agreement.
- 6.2. CE shall reserve the right to adjust agreed delivery and service dates and deadlines by agreement with the customer, should such an action be necessary taking into account the interests of CE and should this be reasonable for the Contractor.
- 6.3. The day of receipt of the agreed complete objects of delivery, including the agreed documentation and delivery papers at the place of receipt specified by us shall be deemed to be the day of delivery.
- 6.4. The Contractor shall be obliged to reimburse us in relation to all losses caused by delay, unless the Contractor provides proof that it is not responsible for such.
- 6.5. The acceptance of a late delivery or service shall not be interpreted as a wavering of damages claims.
- 6.6. Should the agreed deadlines not be complied with for reasons for which the Contractor is responsible, then following the expiry of a deadline to be set by us, we shall, regardless of further statutory claims, be entitled to choose between damages in lieu of performance or to obtain replacement services from a third party. The right of rescission shall remain unaffected.

7 Packaging, shipping, acceptance

- 7.1. The Contractor shall be responsible for suitable packaging.
- 7.2. Our order number must be stated in all transportation and other accompanying documentation. In case of incorrect shipping and delivery paper, we shall be entitled to refuse acceptance of the delivery at the expense of the Contractor.
- 7.3. Unless a separate agreement for packaging has been agreed in writing in an exceptional case, we shall reserve the right to return packaging materials which have been used for the shipping and which are recyclable to the address of the Contractor, and shall implement a charge back of two thirds of the value of the packaging.
- 7.4. The shipping must take place to the place of receipt stated by us or agreed with us. Deliveries where CE must pay the shipping costs in full or in part by means of an agreement must be delivered by means of the cheapest type of shipping for us at the lowest shipping rates.

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8 Transfer of risk

The risk, also that of possible destruction and possible deterioration of the item, also in case of shipping purchases shall not be transferred to CE until full delivery and handover of the ordered goods and/or confirmation of the acceptance of the work or service by our employees in writing. Should the service be provided inclusive of delivery and assembly, the risk shall not be transferred to CE until after completion of the assembly work and confirmation of acceptance by our employees in writing. The putting into operation on the basis of tests shall not represent acceptance.

9 Completion check, controls

- 9.1. During manufacturing and prior to delivery, we reserve the right to check the quality of the materials used, quality of dimensions and quantity, as well as the other quality of the manufactured parts at the factory of the Contractor and its sub-suppliers. The costs of the completion checks and end controls shall be borne by the Contractor, with the exception of the costs for the personnel sent by us, unless a provision to the contrary has been concluded.
- 9.2. Completion check documents and controls in accordance with Number 9.1 shall not release the Contractor from fulfilment obligations and shall not lead to exclusion of defect claims.

10 Invoicing, payment terms

- 10.1. Unless otherwise requested by CE, the Contractor must issue invoices as one copy in accordance with the respectively applicable statutory provisions and must send these to CE separately from the goods. An original delivery note must be attached to each delivery/service. Invoices and delivery notes must contain the information which is necessary for correct booking. In particular, these include the order number and date, our material and order number, the number of units contained in a shipment, weights, etc.
- 10.2. Invoices which do not correspond to the statutory regulations or which do not contain the information stated above shall be deemed not to have been issued. Payment shall take place following receipt of our goods within 14 days minus a 3% discount or within 30 days net following the receipt of an invoice which corresponds to the statutory regulations, however not prior to receipt of the goods or provision of the complete service and, if applicable, acceptance and receipt by CE of the agreed documentation. The day of sending of the funds from our respective bank account shall be deemed to be the day of payment. CE shall be entitled to make partial payments by agreement with the Contractor.
- 10.3. Payment shall take place in reservation of the correctness of the invoices and the conformity with the contract of the services which have been paid for and shall not give rise to an acknowledgement of the correctness of the deliveries and services and therefore no wavering on the part of CE of the fulfilment and defect claims to which it is entitled.

11 Warranty, defect complaints

- 11.1. The Contractor is responsible for ensuring that the delivered goods and services correspond to the agreed specifications in the order and are manufactured from the agreed materials. The Contractor hereby provides a guarantee that these are free from material, manufacturing and/or construction defects in accordance with the state of technology at the time of order and are free from such defects which prevent or reduce the suitability for the usual or contractually agreed use or which annul the value of the delivered goods, equipment or services. The Contractor also hereby provides a guarantee that all services provided by it or objects delivered by it correspond to the most up-to-date state of technology at the time of conclusion of the contract, the applicable legal provisions and the regulations and guidelines of authorities, professional co-operatives and professional associations, and that the Contractor is not aware of any impending changes. This shall apply in particular in relation to the statutory provisions which apply in the EU, the Federal Republic of Germany and the place of business of the Contractor, including regulations pertaining to the protection of the environment. The Contractor shall immediately inform CE of any pending changes of which it is aware.
- 11.2. Should deviations from these regulations be necessary in individual cases, the Contractor must immediately inform CE of such and obtain our written agreement. The usual obligations under sales agreements and work contracts, including any guarantees relating to the quality of the item or service shall not be affected by this provision.

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- 11.3. CE shall reserve all existing rights in case of the delivery of a defective item or the provision of a defective service. In particular, in case of material defects and defects of title we can, according to our choice, request correction of the defect or the delivery of a defect-free item.
- 11.4. Should improvement work be carried out by CE on the basis of an agreement or non-compliance with deadlines for improvement, the Contractor must provide reimbursement in relation to the expenses and costs which are necessary in this respect. This shall also apply to improvement work which CE carries out or has carried out due to special urgency or danger in delay, in particular in case of threatened and/or unusually high level of damage where prior agreement with the Contractor is not possible.
- 11.5. Unless otherwise agreed, the warranty claims of CE shall be time barred within 2 years from the time of delivery or from the time when the defect was discovered, provided that this event took place within the statutory warranty period of 2 years, at the most however 3 years following delivery by the Contractor. Should the delivered product have been used for a construction work in accordance with its customary manner of use and should its defective nature have given rise to warranty claims, the warranty claims of CE shall be time bared within 5 years from the time of transfer of risk.
- 11.6. Defect complaints in relation to the delivery of an ordered item shall be deemed to have been raised on time if obvious defects are notified to the Contractor within 10 days of receipt of the goods.
- 11.7. Defects in goods or services in relation to which a complaint is raised within the limitation period must be corrected by the Contractor immediately and free-of-charge, inclusive of all ancillary expenses by means of repair or exchange of the defective parts, depending on the choice of CE and in accordance with the provision in Number 11.3 The right to request replacement delivery or a defect-free item (see 11.3) shall remain reserved on the part of CE. Defect corrections, as well as replacement deliveries or new manufacturing of the items must be carried out immediately. These shall give rise to the limitation period in accordance with 11.5 being started anew.
- 11.8. All further claims due to defects, in particular the right of rescission and the associated claim to damages in lieu of performance, as well as damages due to breach of contract in accordance with § 280 I of the German Civil Code (BGB) and §§311 II and III BGB, as well as liability in tort shall remain unaffected.

12 Third party property rights, guarantee

- 12.1. The Contractor shall ensure that no third party rights, in particular property rights such as patents, trademarks, utility samples or similar are infringed by means of the delivery or the use of the delivered goods or services provided. The Contractor shall be obliged to release CE from all third party claims which relate to any alleged legal breach and to reimburse any expenses which arise.
- 12.2. Should the Contractor or a third party assume a guarantee in relation to the quality of the delivered item or that the delivered item retains a certain quality for a specified period of time (durability guarantee), then in case of a guarantee claim CE shall, regardless of the statutory claims, be entitled to the rights under the guarantee under the terms in the guarantee declaration and/or the terms stated in the relevant promotional materials against the party which has granted the guarantee. In case that the Contractor has assumed a durability guarantee, it shall be presumed that any material defects which arise during its period of validity are covered by the rights under the guarantee.
- 12.3. Should the Contractor have assumed a guarantee in relation to the quality of the goods or of a work in the form of an undertaking, it shall incur liability in accordance with the statutory provisions to the reimbursement of the loss, including payment of damages in lieu of fulfilment. The limitation period shall amount to 3 years, calculated from the time of discovery of the defect or the non-presence of the respective quality characteristic.

13 Assignments, transfer of contractual performance

- 13.1. Without the express written agreement of CE, the Contractor may not assign performance of the contract and its contractual claims to third parties either in full or in part. However, the Contractor shall remain entitled to engage vicarious agents in relation to the provision of the service.
- 13.2. The agreement to the assignment of claims shall not be withheld by CE without good reason, unless counterclaims exist on the part of CE.

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14 Contractual penalty, damages, reimbursement of expenses

- 14.1. Should the Contractor culpably fail to fulfil its delivery and performance obligations on time, alongside performance, CE can demand a contractual penalty to the amount of 0.5% of the gross order sum per calendar week commenced. The contractual penalty shall be limited to a maximum of 5% of the gross order sum.
- 14.2. The Contractor must pay a contractual penalty to the same amount as in Number 14.1 in case of a culpable breach in relation to quality from the time of the defect notification to the time of the defect correction. The basis for calculation shall be the part of the contractual object which is affected by the breach in relation to quality.
- 14.3. In the cases stated in Number 14.1 and 14.2, CE can demand reimbursement of the losses incurred as a result.
- 14.4. CE shall not be obliged to reserve the assertion of the contractual penalty at the time of acceptance or delivery or provision of the service if applicable, rather it shall be entitled to assert this up until the time of payment of the final invoice.

15 Right of termination due to defective performance

Should it become apparent after conclusion of the contract that the fulfilment of the order by the Contractor is endangered due to lack of performance capability, for example due to economic deterioration, actual performance hindrances, insufficient resources for performance or similar, CE shall be entitled to rescind the contract.

16 Place of jurisdiction, applicable law

- 16.1. In all cases of dispute connected to the contractual relationship, should the Contractor be a business man, a legal person under public law or a public law special fund, the lawsuit must be filed before the court which has jurisdiction for the place of business of our company. We shall also be entitled to bring a lawsuit at the place of business of the Contractor. Disputes in relation to non-pecuniary claims which are assigned to the local courts (Amtsgerichte) regardless of the value of the disputes or disputes which are subject to an exclusive place of jurisdiction shall be excluded from this place of jurisdiction agreement. The place of performance for any payment shall be the respective branch office of CE which placed the order.
- 16.2. Swiss law shall apply to the contract.
- 16.3. The provisions of the Vienna Convention of the United Nations governing International Sales Agreements shall not apply.

17 Group offsetting clause

- 17.1. CE shall be entitled to set off all claims to which it is entitled against the Contractor against all claims to which the supplier is entitled against companies, regardless of legal reasons, in which CE maintains a direct or indirect majority shareholding.
- 17.2. The actual group of companies in which CE maintains a direct or indirect majority shareholding as referred to above can be found on the Internet at the following address: <http://www.cideon-engineering.com/de/unternehmen/standorte>. Following a request, CE can provide the Contractor with information at any time concerning the group of companies referred to in the paragraph above.

18 Direct advertising measures, prohibition of competition

- 18.1. The Contractor shall be obliged not to carry out direct advertising measures in relation to employees and end customers of CE.
- 18.2. The Contractor may not conclude any direct contracts with the end customer or employees of CE as a follow up agreement. A prohibition of competition exists in relation to the end customer.

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- 18.3. In case of a breach of Numbers 18.1 and 18.2, the Contractor shall be obliged to pay a contractual penalty to CE for each instance of breach to a minimum amount of 6,000.00 CHF, however to a maximum of 5% of the total contractual sum of the agreement between the Contractor and CE.

19 Ineffectiveness of clauses

In case of a breach of Numbers 18.1 and 18.2, the Contractor shall be obliged to pay a contractual penalty to CE for each instance of breach to a minimum amount of 6,000.00 CHF, however to a maximum of 5% of the total contractual sum of the agreement between the Contractor and CE.