

## GENERAL TERMS FOR PROCUREMENT AND PURCHASE FOR WORK AND MATERIALS CONTRACTS

All our (SCYTEQ GmbH as buyer) orders and contracts in the scope of our business dealings are based on these General Terms for Procurement and Purchase for Work and Materials Contracts. These terms equally apply to all work performed and services provided, particularly assembly work that we order or commission.

Divergences from these terms must be expressly acknowledged in writing. This particularly applies to the validity of the General Business Terms of the supplier.

### 1 DOMAIN OF APPLICATION

1.1 Exclusively our General Terms for Procurement and Purchase for Work and Materials Contracts apply. We do not acknowledge the supplier's terms of sale unless we have expressly consented to their validity in writing. Our terms also apply if we accept, being aware of provisions of the supplier, that contradict our terms of the supplier that diverge from our terms, a delivery from said supplier without any reservation.

1.2 All agreements made between ourselves and the supplier for the purpose of executing this agreement require written form.

1.3 Our General Terms for Procurement and Purchase for Work and Materials Contracts apply, to the extent not otherwise prescribed in writing, only if the supplier is an entrepreneur pursuant to Paragraph 14 *BGB* [German Civil Law], a public law entity or a legal entity with special public funds.

1.4 Our Sales and Delivery Terms also apply to all subsequent transactions with the supplier.

### 2 CONCLUSION OF THE AGREEMENT, WORKS CONTRACT AND CONTRACT WITH FIXED DELIVERABLES, PROCUREMENT RISK

2.1 Offers must be submitted in writing and at no charge to us. Only orders placed in writing are legally binding. In the event a transaction is concluded form-

lessly, our order shall be deemed a commercial letter of acknowledgement.

2.2 Machines must be offered in the most modern version. They must correspond to the latest findings and the current state-of-the-art that applies in the area of general machine building or specific, special-purpose machine building. Constructions for such machines must be manufactured in accordance with DIN / EN (*Deutsches Institut für Normung* [German Institute for Standardization] / Europäische Normen [European Norms]) and preferably standardised machine parts must be used. All machines, apparatuses and equipment offered must comply with legal provisions, in particular the safety provisions of the *Gerätesicherheitsgesetz* [Equipment Safety Act], the DIN, EN and VDE [Association of German Engineers] provisions and well as the *Vorschriften der Berufsgenossenschaften* [Regulations of the Professional Associations], in particular the accident prevention regulations.

2.3 Machine elements and parts must be designed and allocated such that they can be maintained, inspected and replaced as quickly and with as little complication as possible.

2.4 The supplier is obliged to accept our order within a period of no more than 1 (one) week by means of written confirmation or to execute it without reservation, both forms are deemed acceptance. Late written acceptance is deemed a new offer and in turn, requires our acceptance.

2.5 We may inform ourselves of the provision of goods or services in compliance with the contract during hours of business or operation. Upon request, the documents required for this, must be submitted to us for viewing.

### 3 INSPECTION DUTY AND DUTY TO TAKE ADVICE

3.1 The supplier is obliged to check with us with regards to the designated use of the goods said party is to deliver to our establishment and in the process, to also consider seasonal and other fluctuations in the conditions of use. Said party must monitor the regular machine running times and maintenance options. The supplier solely undertakes to follow our advice on

the selection and specification of the goods to be delivered, this particularly includes the duty to notify in the event of any concerns relating to the goods that we have selected or our specifications for the designated purpose.

3.2 The supplier will immediately notify in writing if said party has any concerns relating to the nature and scope of the goods and services to be provided that we request or if said party believes that a third party or we are impairing its ability to provide the goods and services.

### 4 CHANGES TO SERVICES, THIRD PARTIES

4.1 We may require subsequent changes to the agreed scope of supply in terms of performance and quantity to the extent this becomes necessary, particularly for operational reasons, this may, for example, represent a significant change in our internal orders situation and the change is typical of the sector or reasonable for the supplier. We must express our change request within a period of 2 (two) weeks in advance.

4.2 We may terminate or withdraw from the agreement for a good reason, particularly if the supplier has applied for the initiation of insolvency proceedings or if the supplier has stopped making payments and this not only on a temporary basis or if insolvency proceedings on the assets of the supplier have been initiated and/or the initiation of such proceedings has been rejected due to insufficient assets, which corresponds to the going concern principle.

4.3 The supplier is not entitled, without our written approval, to have the core obligation it owes fulfilled by third parties or sub-contractors.

### 5 PRICE SETTING

5.1 The price specified in the order is deemed a fixed price including the respective VAT prescribed by law. Any change in pricing requires our prior written consent. Additional goods or services or changes to the scope of deliverables and services are only remunerated if a written supplementary agreement relating to this aspect has been concluded prior to the respective performance.

5.2 Pricing is, in any case, to occur "carriage free" and/or "carriage free to specified shipping address", that is CIP\* respectively DAP\* or DDP\* Cochem/Mosel (Germany) or CIP\* respectively DAP\* or DDP\* to the specified destination and still in a loaded state.

5.3 The agreed price is due for payment within 45 (forty five) calendar days following the complete provision of the good and service and after we have received the invoice. If we make the payment within 21 (twenty one) calendar days, the supplier shall grant us a 3 (three) percent discount off the gross sum of the invoice. A payment reminder must be made in writing. The presentation of the transfer order to the bank and/or the credit institute and/or the day the check was forwarded is decisive in determining the timeliness of our payment.

5.4 We are only able to process invoices providing the order number and the date of the order have been specified in the invoice. The supplier is responsible for all other consequences from failure to comply with this obligation to the extent said party does not demonstrate that such consequences are not attributed to it.

5.5 We are entitled to offset and withhold payments to the extent prescribed by law.

## 6 DELIVERY TIME, FORCE MAJEURE, DELAY IN DELIVERY, CONTRACTUAL PENALTY

6.1 Delivery times and deadlines are mandatory for the supplier. If the supplier does not provide the good or service within the agreed delivery time or if said party defaults, then we are entitled to the claims prescribed by law, this particularly includes the right to withdraw from the agreement and the right to demand the compensation of damages.

6.2 The delivery is always to occur CIP\* respectively DAP\* or DDP\* Cochem/Mosel (Germany) or CIP\* respectively DAP\* or DDP\* to the specified destination to the extent no written agreements stating otherwise have been concluded.

6.3 The supplier is obliged to immediately notify us in writing if events occur or it becomes aware of circumstances that lead to non-compliance with the agreed delivery times or deadlines.

6.4 If the performance obligation is not

complied with in a timely manner as the result of a force majeure - that is circumstances and events, which cannot be avoided though observing the care typical of a prudent business management - we may require that the supplier provide the good or service at a later date and at the originally negotiated conditions or we may, after an appropriate period has passed, withdraw in full or in part from the agreement and/or terminate it in full or in part.

6.5 If any documents, data, materials and the like that we are to provide are not in place, this only excludes default of the supplier if the supplier has issued a written reminder and has not received them within an appropriate period of time.

6.6 If the supplier defaults, we may impose a contractual penalty to the amount of 0.5 (one half) percent of the agreed net price for every business day. The contractual penalty may not, however, exceed a total of 20 (twenty) percent of the agreed net price. We are entitled to impose the contractual penalty in addition to performance and as a minimum amount of compensation of damages owed by the supplier as prescribed by legal provisions. The assertion of further damages remains unaffected. If we accept the delayed good or service, then we may only impose the contractual penalty vis-à-vis the supplier if we have declared a corresponding reservation no later than within 10 (ten) business days following the receipt of the delayed delivery.

## 7 WARRANTY, RIGHTS IN THE EVENT OF DEFECTS AND BREACHES OF DUTIES

7.1 The supplier guarantees that the deliverable corresponds to the contractual provisions in terms of its quality, in particular, in terms of its function, operating speed and precision.

7.2 The supplier offers its guarantee that the best materials, which are suitable for the designated purpose have been used, that the performance provided is proper and professional and while accounting for the latest state-of-the-art in science and technology.

7.3 The supplier provides a warranty of 24 (twenty four) months for the delivery of technical parts, industrial products, devices, machines and equipment from

the date of acceptance by us. The supplier expressly guarantees that the good sold completely complies with the samples, models and descriptions it provided.

7.4 The supplier of raw materials and operation supplies will notify us in a timely manner before changing supply sources, recipes or production methods such that we are able to procure sufficient inventories of the original or otherwise proven raw materials and operating supplies in order to continue our operations until other supply sources are found in the event the new raw materials and operating supplies are not suitable.

7.5 The supplier is obliged to only sell goods to us that comply with mandatory laws, ordinances, standards and regulations in force and that apply to the supplier and make it possible for us to comply with mandatory regulations relating to the goods without undertaking further activities.

7.6 The supplier remains responsible for its goods or services and the defect-free provision of both even if we sign, approve, stamp or otherwise annotate, the plans, drawings, calculations or other performance documents submitted by the supplier to demonstrate that we have read this documents.

7.7 Legal provisions apply to our rights in the event of material and legal defects of the goods provided, agreed assembly, a good with assembly or operating instructions to be provided as well as other breaches of duty on the part of the supplier to the extent nothing else has been subsequent ordained: (a) Our report of defects in the scope of the duty to inspect and report pursuant to Section 377 and Section 381 HGB [German Commercial Code] is deemed prompt and timely if it is received by the supplier within 2 (two) weeks. (b) If an attempt at subsequent performance on the part of the supplier in the form of rectifying the defect or providing a defect-free good has failed, if said party has unrightfully refused to provide subsequent performance or if an adequate subsequent deadline that we have set expires, then we are directly entitled to rectify the defect ourselves or to commission a third party with rectifying said defect and to require the reimbursement of the expenses required for in addition to an appropriate advance payment from the supplier. In addition, the

right to rescission and the reimbursement of any further damage remains unaffected. This right to self performance does not apply if the supplier is entitled according to the legal regulations to refuse subsequent performance. (c) If the immediate rectification of defects is not possible due to our operational situation, the supplier must promptly provide a provisional improvement to the extent the resource requirement for this is not grossly disproportionate to our interest in a provisional improvement. The final rectification of defects must be performed as soon as the operational situation allows us to do so. In the event of particular urgency or the risk of default, we may, if we regard setting a deadline for subsequent performance to be unreasonable for us, rectify the defect by means of self-performance and require the reimbursement of the necessary expenditure. We will immediately notify the supplier of any warranty events and the nature and scope of any urgent need for action. (d) Our rights of recourse prescribed by law within a supply chain, see Section 478 and Section 479 *BGB* [German Civil Code], also apply even if the good was not delivered to a consumer at the end of the supply chain, but to a contractor. The possibility for recourse pursuant to Section 478 and 479 *BGB* also applies if the supplier has not delivered a deficient good to us, but accessories or raw materials, which were deficient. (e) Both in the event of failure to deliver and in the event of rescission, we may set an appropriate period for the supplier to remove any deficient good. After the deadline has expired, we may exploit the contractual performance at the supplier's expense while upholding the economic interests of the supplier, e.g. by means of unrestricted sale and returning the amount received to the supplier - in increments in exchange for the reimbursement of the purchase price of subsequent delivery. (f) In the event a right is the subject matter of the agreement, the supplier is liable for its existence and other freedom from legal defects divergent to Section 437 Clause 3 *BGB* for the compensation of damages or expenses even if said party was not aware of the defect or the defect is not attributed to it.

## 8 SPARE PARTS, CUSTOMER SERVICE

The supplier of machines is, for a period amounting to twice the valid usage period

for the machine as per the applicable tax depreciation table of the German Tax Administration a), obliged to (a) supply us with all spare parts and (b) to maintain customer service, which can be approached 5 (five) days a week from 7 30 a.m. to 7 p.m. and which arrives at our location within 5 (five) hours.

## 9 PERIOD OF LIMITATION

9.1 The reciprocal claims of the contractual parties expire in accordance with legal provisions to the extent not otherwise ordained.

9.2 Divergent from Section 438 Para. 1 Number 3 *BGB*, the general period of limitation for material and legal defects amounts to 3 (three) years following the delivery of the good. Furthermore, the period of limitation for raw materials, which we process further into end products, amounts to 6 (six) years.

9.3 Divergent to the above Clause 9.2 and Section 438 Para. 1 No. 2 *BGB*, the general period of limitation for material and legal defects for constructions and goods, which are employed for a construction in compliance with their typical use and which result in deficiency, amounts to 6 (six) years following the delivery of the good.

9.4 If no delivery took place, the period of limitation begins once the claim has arisen.

9.5 The periods of limitation set forth in the *Kaufrecht* [Sales Law] and the above Clauses 9.2 and 9.3 apply to our extra-contractual claims to compensation, which are associated with a defect of the good only as minimum periods. The regular legal period of limitation pursuant to Section 195 and 199 *BGB* also applies. The same applies if an acquired right does not exist, if the supplier has offered a guarantee or has maliciously concealed a defect.

9.6 The period of limitation for defect claims is also postponed if the supplier verifies the existence of a defect itself. Postponing the period of limitation only ends once the supplier has notified us in writing that negotiations have ended or once we have been forwarded the outcome of the inspection or the supplier refuses to continue its rectification of defects in writing. The resumption of negotiations, inspection or the rectification

of defects again results in the period of limitation being postponed.

## 10 TRADEMARKS, SOFTWARE

10.1 To the extent not otherwise negotiated in an individual agreement, the supplier grants us at least a non-exclusive, non-transferable and unlimited right to use the software and hardware products and the corresponding documentation.

10.2 We are entitled to create duplicates for backup purposes. We are also entitled to disseminate to our customers in connection with executing contracts while referring to any copyright notice of the author.

10.3 The supplier offers the guarantee that the software and its data structure is free from defects and assures orderly duplication.

10.4 For software provided, which has been specially developed or modified for us, we may require that the source code of the software, including specification of the author or the authors, is deposited with a notary of our choice and at our expense and on the basis of an escrow agreement, which authorises the notary to hand over the deposited documents in the event the supplier undergoes liquidation or insolvency. In the event such a handover is justified, the supplier already grants us at this time the non-exclusive, unlimited right to expand the source code and to the same or modified use corresponding to the scope, in which we are entitled to use the software provided.

10.5 The supplier will ensure that, in connection with the provision of its goods and services, no third-party rights are breached within the Federal Republic of Germany.

10.6 If rights are asserted by a third party for the aforementioned reasons, then the supplier is obliged to release us from such third-party claims upon the first written request. If the release on the part of the third party has not taken place within an appropriate period of time, we are entitled to make arrangements with the third party and in particular, to conclude a settlement. 10.7 The obligation to release on the part of the supplier relates to all forms of use, which arise for us out of or in connection with third-party use.

## 11 CONFIDENTIALITY

11.1 Images, drawings, calculations, models and other specifications or documents, which have been handed over to the supplier for the production of the delivery item as well as images, drawings and other documents that the supplier has created corresponding to our specifications, may be published by the supplier without any prior written consent on our part nor passed on to third parties or made accessible to third parties.

11.2 We expressly reserve all commercial rights of ownership and copyrights to our drawings and other documents without restriction. All images, drawings or other documents or records must be provided with a noticeable, easy-to-read and highly visible reference to d7 Technologies GmbH as the customer. The supplier is obliged to report the safekeeping of such documents, records or models and agrees that they are transferred to our ownership with the delivery of the good defined in the agreement. All images, drawings and other documents or records must be exclusively used for production in accordance with our order and are to be returned to us upon request including all copies or duplicates, also in electronic or digital form on storage media, at any time and immediately. After the order has been executed, they must absolutely be returned in any case.

11.3 All images, drawings, calculations, records or models or other specifications and documents must be treated with strict confidentiality and be kept secret vis-à-vis third parties unless their disclosure occurs with our express, prior written consent. The obligation to maintain confidentiality also applies after the agreement has been executed. It ends, however, if and to the extent the production knowledge included in the transferred images, drawings etc., has become publicly known.

11.4 Third parties may only refer to any business relations with us providing we have consented to this.

## 12 RIGHT TO RETENTION AND OFFSET

12.1 A right to retention on the part of the supplier arising out of any receivables is excluded unless the right to retention arises out of the same contractual relationship.

12.2 The supplier may offset its own receivable against receivables, to which we are entitled, providing said receivable of the supplier is undisputed, that is, it has been acknowledged in writing or has been ruled on with legal effect.

## 13 PROVISIONS, RETENTION OF TITLE

13.1 To the extent we provide parts or materials to the supplier, we reserve the ownership thereof. Any processing or alteration by the supplier occurs on our behalf. In the event of processing or mixing, we acquire joint ownership in the resulting product in the ratio of the value of the part or material we provided to that of the other items processed at the time of processing.

13.2 The transfer of the good's ownership to us occurs unconditionally and without consideration for the payment of the corresponding remuneration. In any case, all forms of the expanded retention of title are excluded so that, if applicable, retention of title validly declared vis-à-vis us by the supplier only has the effect of basic retention of title.

## 14 MANUFACTURER LIABILITY

14.1 To the extent the supplier is responsible for a product damage, said party is obliged to release us from third-party claims to compensation upon first request if the reason for this falls under its area of control or organisation and it is liable in relation to third parties.

14.2 In the scope of its obligation to release, the supplier is also to reimburse any expenses to us pursuant to Section 683 and Section 670 BGB, which arise out of or in connection with any recall we conduct. We will inform the supplier - to the extent possible and reasonable - regarding the content and scope of any recalls and give said party the opportunity to issue a statement. Further legal claims remain unaffected.

14.3 The supplier is to take out and maintain product liability insurance with lump-sum coverage to the amount of at least 5,000,000.00 (five million) Euros (EUR) for each case of personal injury or material damages. The supplier is to demonstrate the existence of such insurance coverage at our request.

## 15 PLACE OF PERFORMANCE, CHOICE OF LAW AND JURISDICTION, WRITTEN FORM

15.1 To the extent not otherwise stated in the order, the delivery address that we have provided shall also serve as the place of performance.

15.2 The Law of the Federal Republic of Germany applies to these General Terms for Procurement and Purchase for Work and Materials Contracts and to all legal relations between ourselves and the supplier to the exclusion of the UN Convention on the International Sale of Goods. Requirements and effects of the retention of title benefitting us are in turn subject to the law at the respective place, where the good is stored, if the choice of law in favour of German Law is impermissible or invalid there.

15.3 To the extent the buyer is a merchant in the sense of the German Commercial Code, a public-law entity or a public law entity with special public funds, the exclusive jurisdiction for all disputes directly or indirectly resulting out of the contractual relationship is Cochem/Mosel (Germany). We are, however, also entitled to file a claim at the place of performance for the obligation to provide goods and services or at the headquarters of the supplier.

15.4 Any amendment of this agreement requires written form.

## 16 SALVATORY CLAUSE

Should individual provisions of these General Terms for Procurement and Purchase for Work and Materials Contracts be or become legally invalid in their entirety or in part, then the validity of all other provisions will not be affected by this. A valid provision will apply in place of the invalid one, which corresponds to the intention of the parties upon signing this agreement. The same applies in the event of a gap in a provision.

NOTE: \* pls. see Incoterms 2010

VALIDITY: Valid effective January 1, 2011