

**GENERAL CONDITIONS  
FOR THE SUPPLY OF PRODUCTS AND SERVICES  
FOR COMMERCIAL TRANSACTIONS OF BUSINESSES (foreign countries)  
of Vits Technology GmbH**



- FEBRUARY 2020 -

**ARTICLE 1 - GENERAL**

- 1.1 The scope of deliveries and/or services (hereinafter referred to as 'Supplies') shall be determined by these General Conditions, which are intended to be applied together with the specific conditions of the order.

In case of contradiction between these General Conditions and any specific conditions agreed upon between the parties, the specific conditions shall prevail.

General conditions of the Purchaser shall apply only if and when expressly accepted by Vits Technology GmbH (hereinafter referred to as 'Supplier'). No terms and conditions appearing on the Purchaser's order that are additional to or different from the Supplier's terms and conditions shall be binding upon the Supplier unless specifically agreed to by him in writing.

Receipt by the Supplier of the Purchaser's order or the Purchaser's confirmation of the Supplier's order acknowledgement without prompt objections to the terms and conditions therein, shall not constitute acceptance by the Supplier of such terms and conditions.

- 1.2 Any questions relating to this Contract, which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed:

- by the United Nations Convention on Contracts for the International Sale of Goods (CISG), and
- to the extent that such questions are not covered by CISG, by reference to the substantive law of Switzerland.

- 1.3 Any reference made to trade terms (such as EXW, FOB, etc.) is deemed to be made to the relevant term of INCOTERMS published by the International Chamber of Commerce.

- 1.4 If one or more provisions of these General Conditions should be or become invalid, the remaining conditions will continue to be valid and apply.

**ARTICLE 2 - CHARACTERISTICS OF THE SUPPLIES**

- 2.1 It is agreed that any information relating to the Supplies and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of the Supplier, shall not take effect as terms of the Contract unless expressly referred to in the Contract.
- 2.2 If and to the extent agreed, the Supplier shall provide information and drawings, which are necessary to permit the Purchaser to erect, commission, operate and maintain the Supplies. The Supplier shall not be obliged to provide manufacturing drawings for the Supplies or spare parts.
- 2.3 Unless otherwise agreed, the Purchaser does not acquire any property rights in software, drawings, technical information, etc. (hereinafter referred to as 'Documents'), which may have been made available to him. The Supplier also remains the exclusive owner of any intellectual or industrial property right relating to the Supplies. The Documents shall not be made accessible to third parties without the Supplier's prior consent.

**ARTICLE 3 - INSPECTION OF THE GOODS BEFORE SHIPMENT**

- 3.1 If the parties have agreed that the Purchaser is entitled to inspect the Supplies before shipment, the Supplier must notify the Purchaser within a reasonable time before the shipment that the Supplies are ready for inspection at the agreed place.
- 3.2 Unless otherwise agreed, such inspection shall be carried out at the place of manufacture during normal working hours in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.

- 3.3 If the Purchaser is not present or represented during such inspections, the inspection report shall be sent to the Purchaser and shall be deemed as accurate

- 3.4 The Purchaser shall bear all traveling and living expenses for his representatives in connection with such inspections.

**ARTICLE 4 - PRICE**

- 4.1 The prices are subject to change prior to acceptance of Purchaser's order by Supplier.

- 4.2 Unless otherwise agreed in writing, the prices are in EUR and do not include VAT.

- 4.3 Unless otherwise agreed, the prices are for delivery ex works pursuant to INCOTERMS 2020 and include any costs which are for the Supplier's account according to this Contract. However, should the Supplier bear any costs, which, according to this Contract, are for the Purchaser's account (e.g. for transportation or insurance beyond the agreed INCOTERMS) such costs shall not be considered as having been included in the price and shall be reimbursed by the Purchaser.

- 4.4 If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.

- 4.5 Any taxes, customs duties, fees and other dues, including social security contributions, payable outside the Federal Republic of Germany are to the Purchaser's account.

**ARTICLE 5 - PAYMENT CONDITIONS**

- 5.1 Unless otherwise agreed in writing between the parties, payment of the contract price by the Purchaser to the Supplier shall be made as follows:

- 1/3 of the contract price shall be paid within 15 (fifteen) days from the Supplier's order confirmation date respectively the date of signature of the Contract by both parties;
- 2/3 of the contract price shall be paid by means of an irrevocable Letter of Credit to be issued by a reputable bank in favour of the Supplier, such Letter of Credit being subject to the Uniform Customs and Practice for Documentary Credits (UCP 500).

Such Letter of Credit shall be opened within 30 (thirty) days from order date or the date of signature of Contract and shall have a validity to cover the entire delivery period plus 30 (thirty) days. Unless otherwise agreed, the Documentary Letter of Credit shall be payable at sight against presentation of the forwarder's transport document or such other transport documents as agreed in the specific conditions of the order (depending upon the applicable INCOTERM) and shall allow partial shipments and transshipments.

- 5.2 If a party does not pay a sum of money when it falls due, the other party is entitled to interest upon that sum from the time when payment is due up to the time of payment.

Unless otherwise agreed, the rate of interest shall be 2 % above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment.

- 5.3 Irrespective of the means of payment used, payment shall not be deemed to have been effected before the Supplier's account indicated in the specific conditions has been fully and irrevocably credited.

- 5.4 The Purchaser shall not withhold any due payments by reason of any counter-claims not recognized by the Supplier, nor shall the Purchaser set any such counter-claims off from any payments due.

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- 5.5 In case of late payment, the Supplier may, after having notified the Purchaser in writing, suspend his performance of the Contract until he receives payment.

If the Purchaser has not paid the amount due notwithstanding having been reminded by the Supplier and having been granted a final period of time for such payment, the Supplier shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred.

**ARTICLE 6 - RETENTION OF TITLE**

Items pertaining to the Supplies ('Retained Goods') shall remain the property of the Supplier until full payment of the price has been effected.

For the duration of the retention of title the Purchaser may not pledge the Retained Goods or use them as security. The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product in the country concerned. The Purchaser shall also inform the Supplier forthwith of any seizure or other act of intervention of third parties.

The retention of title shall not affect the passing of risk in accordance with the respective applicable INCOTERM.

**ARTICLE 7 - TIME FOR SUPPLIES AND DOCUMENTS**

Unless otherwise agreed, all deliveries and Supplies shall be "Ex Works" (EXW).

The Supplier must provide the documents (if any) indicated in the applicable INCOTERM.

**ARTICLE 8 - TIME FOR SUPPLIES, DELAY AND REMEDIES THEREFOR**

- 8.1 Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
- 8.2 If the parties, instead of specifying the time for Supplies, have specified a period of time on the expiry of which delivery shall take place, such period shall start to run on the date, when the concluded contract of sale enters into effect in accordance with such terms specified in the specific conditions for the entering into force of the Contract.
- 8.3 If the Supplier anticipates that he will not be able to observe the time for Supplies, he shall notify the Purchaser accordingly, stating the reason and, if possible, the time when delivery can be expected.

If delay in delivery and Supplies is caused by an event of Force Majeure, as described in Article 12 or by an act or omission on the part of the Purchaser or by any other event beyond the reasonable control of the Supplier, the time for delivery shall be extended by a corresponding period having regard to all the relevant circumstances. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for Supplies.

- 8.4 When there is delay in delivery of any Product, for which delay the Supplier is to be held responsible, the Purchaser is entitled to claim liquidated damages equal to 0.5 % (or such other percentage as may be agreed) of the price of the delayed Product for each complete week of delay, provided that the Purchaser notifies the Supplier of the claim of liquidated damages for delay within 15 (fifteen) days of the date, when delivery should have taken place.

Where the Purchaser so notifies the Supplier after 15 (fifteen) days of the agreed date of delivery, liquidated damages will run from the date that the Supplier has received the Purchaser's notice.

Liquidated damages for delay shall not exceed 5% of the price of the delayed Product or such other maximum amount as may be agreed.

- 8.5 If the Supplier has not delivered the Product or performed his services for reasons for which he is responsible by the date on which the Purchaser has become entitled to the maximum amount of liquidated damages under clause 8.4., and if the Product has still not been delivered, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than 14 (fourteen) days.

If the Supplier does not deliver the Supplies within such final period and this is not due to any circumstance which is beyond the Supplier's control, then the Purchaser may by notice in writing to the Supplier, terminate the Contract in respect of such part of the Product as cannot in consequence of the Supplier's failure to deliver be used as intended by the parties.

- 8.6 If the Purchaser terminates the Contract in accordance with the preceding clause 8.5., he shall be entitled to compensation for the loss exceeding the amount of liquidated damages, he has suffered as a result of the Supplier's delay. However, the total compensation payable, including the liquidated damages, which are payable under clause 8.5., shall not exceed 15 % of that part of the purchase price, which is attributable to the part of the Product in respect of which the Contract is terminated.
- 8.7 Liquidated damages under clause 8.4. and termination of the Contract with compensation as per clause 8.6. are the exclusive remedies available to the Purchaser in case of delay in delivery or non-delivery.

- 8.8 If the Purchaser anticipates that he will be unable to accept the Supplies at the time of Supplies, he shall forthwith notify the Supplier accordingly stating the reasons and, if possible, the time when he will be able to accept the Supplies.

If the Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place. The Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser.

- 8.9 Unless the Purchaser's failure to accept delivery is due to any circumstance as described in clause 12.1. (Force Majeure), the Supplier may by notice in writing require the Purchaser to accept Supplies within a final reasonable period.

If, for any reason for which the Supplier is not responsible, the Purchaser fails to accept Supplies within such period, then the Supplier may by notice in writing terminate the Contract in whole or in part. The Supplier shall then be entitled to payment of the purchase price and compensation for the loss he has suffered by reason of the Purchaser's default.

**ARTICLE 9 - ASSEMBLY AND ERECTION**

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

- 9.1 The Purchaser shall provide at his own expense and good time:
- a. all earth and construction work and other ancillary work outside the scope of the Supplier, including the necessary, skilled and unskilled labour, construction materials and tools.
  - b. the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
  - c. energy and water at the point of use including connections, heating and lighting,

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- d. suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Purchaser shall take all measures it would take for the protection of his own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
- e. protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
- 9.2 Before erection works start, the Purchaser shall make available of his own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- 9.3 Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparation work must have been advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
- 9.4 If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle time and any additional traveling of the Supplier or the erection personnel.
- 9.5 The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in writing if assembly, erection or commissioning has been completed.
- 9.6 If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.
- ARTICLE 10 - LIABILITY FOR NON-CONFORMITY OF THE SUPPLIES**
- 10.1 The Purchaser shall examine the Supplies as soon as possible after arrival at their destination and shall notify the Supplier in writing of any defects or lack of conformity of the Supplies within 10 (ten) days from the date when the Purchaser discovers or ought to have discovered the lack of conformity or the defects.
- The Supplier's liability for non-conformity of the Supplies or for defects resulting from faulty design, materials or workmanship is limited to a period of 12 months from the date of delivery, unless otherwise agreed.
- The Purchaser shall without undue delay notify the Supplier of any defect which appears. Such notice shall under no circumstances be given later than two weeks after the expiry of the defects liability period. If the Purchaser does not notify the Supplier of a defect or about the non-conformity of the Product within the time limits set forth in this clause or in any of the specific conditions of the order, he shall lose his right to have the defect or the non-conformity remedied.
- 10.2 Supplies are deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties, but the Purchaser will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.
- 10.3 On receipt of the Purchaser's notice in writing specifying the lack of conformity or the defect, the Supplier shall at his option remedy the lack of conformity or defect without undue delay as follows:
- a. The Supplier shall within a period of time, which is reasonable in the circumstances, replace the non-conforming Supplies on a EXW delivery basis; or
- b. The Supplier shall within a period of time, which is reasonable in the circumstances, repair the Supplies at the Purchaser's premises, the Purchaser granting access to the Supplier's personnel and giving all reasonable support and assistance.
- If the Purchaser has given notice of a lack of conformity and no lack of conformity is found, for which the Supplier can be held responsible, the Supplier shall be entitled to compensation for the costs he has incurred as a result of such notice.
- 10.4 If the Supplier does not fulfil his duties under clause 10.3. within a reasonable period of time, the Purchaser may, by written notice, fix a final time for completion of the Supplier's obligations.
- If the Supplier fails to fulfil his obligations to remedy within such final time, the Purchaser may himself undertake or employ a third party to undertake the necessary remedial works at the expense of the Supplier.
- Where successful remedial work has been undertaken by the Purchaser or a third party, reimbursement by the Supplier of the reasonable costs incurred by the Purchaser shall be in full and final settlement of the Supplier's liability for the said defect or non-conformity of the Supplies.
- 10.5 Where the lack of conformity has not been successfully remedied:
- a. the Purchaser is entitled to a reduction of the purchase price in proportion to the reduced value of the Supplies, provided that such reduction shall under no circumstances exceed 15 % of the purchase price; or
- b. where the lack of conformity is so substantial as to significantly deprive the Purchaser of the benefit of the Contract, the Purchaser may declare the Contract avoided by giving written notice to the Supplier.
- 10.6 The Supplier is not liable for lack of conformity of the Product arising out of materials provided by, or a design made or specified by the Purchaser.
- The Supplier is liable only for any lack of conformity of the Supplies which appear under the conditions of operation provided for in the Contract and under proper use of the Supplies.
- The Supplier's liability does not cover defects or deficiencies which are caused by faulty maintenance, incorrect erection/installation or faulty repair by the Purchaser, or by alterations carried out without the Supplier's consent in writing. Finally, the Supplier's liability does not cover normal wear and tear or damage from corrosive materials, incorrect solvents, fluids or lubricants and incorrect or faulty power supply.
- 10.7 The above liability for lack of conformity of the Supplies is in lieu of all other liabilities or warranties, express or implied, including but not limited to any implied warranty of merchantability and/or fitness for a particular purpose and is in lieu of all other obligations or liabilities on the part of the Supplier of any nature whatsoever.
- Unless otherwise agreed in writing, no action for lack of conformity or defect can be taken by the Purchaser, whether before judicial or arbitral tribunals, after two years from the date of delivery of Supplies. It is expressly agreed that after the expiry of such term, the Purchaser will not plead non-conformity of the Supplies or make a counter-claim in respect thereof, in defence to any action taken by the Supplier against the Purchaser for non-performance of this Contract.

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**10.8 Defects of Title**

The contractual partners enter into the mutual commitment, not to violate the rights of third parties, especially patents, utility models, trademarks and further industrial property rights and copyrights.

The Supplier guarantees that the Supplies are free of defects in this respect, the Purchaser accounts for any provided materials being free from rights of third parties and do not interfere in their trademark rights.

The Purchaser furthermore undertakes to have the Supplies used only for the contractually agreed purpose. A use beyond the contractually agreed purpose contrary to the Contract results in a complete disqualification of any claims of the Purchaser towards the Supplier.

The Supplier - in regard to industrial property rights of third parties and beyond - does not take over warranty for such products, auxiliary means or further objects, of which the Purchaser makes use for the operation of the Supplies, and which are not part of the sales Contract. The Purchaser assures that he will inform on possible rights of third parties in own responsibility.

If the Supplies are manufactured in a special construction desired by the Purchaser, the Purchaser accounts for the fact that this desired special design does not infringe the industrial property rights of third parties. In this respect the Purchaser indemnifies the Supplier from all claims of the owner of the right.

**ARTICLE 11 - CO-OPERATION BETWEEN THE PARTIES**

The Purchaser shall promptly inform the Supplier of any claim made against the Purchaser by his customers or third parties concerning the goods delivered or intellectual property rights relating thereto.

**ARTICLE 12 - FORCE MAJEURE**

12.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following events: natural disasters, strikes, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of public transportation, industrial dispute, war, civil war or warlike operations, threats of terrorism or actions of terrorists, civil commotion, usurpation of civil or military government, restrictions in the use of power, epidemics, pandemics and delays in deliveries by subcontractors caused by any such circumstances referred to in this clause or any other circumstances which are beyond the reasonable control of the party affected („Force Majeure“).

12.2 The party claiming to be affected by a Force Majeure-event shall notify the other party in writing without delay of the commencement and of the cessation of such circumstance.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Supplies.

12.3 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than 60 (sixty) days or an aggregate period of more than 120 (one hundred and twenty) days on account of one or more events of Force Majeure, the parties will attempt to agree upon a mutually satisfactory solution. Failure to agree upon such solution within 30 (thirty) days of being requested to do so by the other party, shall entitle either party to terminate the Contract by giving written notice to the other.

Upon such termination, the Purchaser shall pay to the Supplier that part of the contract price which is properly attributable to the parts of the Supplies or work executed by the Supplier at the date of termination plus the costs reasonably incurred by the Supplier in the removal of the Supplier's equipment from the Purchaser's premises.

**ARTICLE 13 - ANTICIPATED NON-PERFORMANCE**

Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of its obligations under the Contract, where it is clear from the circumstances that the other party will not be able to perform its obligations. A party suspending its performance of the Contract shall forthwith notify the other party thereof in writing.

**ARTICLE 14 - LIMITATION OF LIABILITY**

14.1 The Supplier is liable to the Purchaser for direct damages to property and injury or death of any person, provided that those property damages or injuries to persons are attributable to the negligence of the Supplier or his employees.

The Supplier's liability for the above is limited

- a. for property damage to a maximum of EUR 1,000,000 per occurrence; however, in total not exceeding EUR 5,000,000;
- b. for bodily injury or death of persons to EUR 2,000,000 per occurrence.

These provisions shall apply only to personal injury and property damages which occur before installation/erection and acceptance of the Supplies to be delivered.

14.2 The total liability of the Supplier, including his subcontractors or suppliers, in respect of any and all claims, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non-performance of any obligation under this Contract, or from the manufacture, sale, delivery, re-sale, repair, replacement or use of any Product or the furnishing of any service, shall not exceed the price attributable to the Product or service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the warranty period specified in clause 10.1.

14.3 In no event, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, shall the Supplier, or his subcontractors or suppliers, be liable for any special, consequential, incidental, indirect or exemplary damages, including, but not limited to, loss of profit or revenues, loss of use of the Supplies or any associated equipment, cost of capital, cost of substitute goods, down-time costs or claims of the Purchaser's customers for such damages.

14.4 If the Supplier furnishes the Purchaser with advice or other assistance which concerns any Product supplied hereunder or any system or equipment in which any such Product may be installed and which is not required by the terms of this Contract or pursuant to any agreement resulting hereof, the furnishing of such advice or assistance shall not subject the Supplier to any liability, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise.

**ARTICLE 15 - RESOLUTION OF DISPUTES**

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. The language of arbitration shall be the English language.

**Langenfeld, February 2020  
Vits Technology GmbH**