

GENERAL TERMS AND CONDITIONS OF PURCHASE

I. General Terms and Conditions of Purchase

Any and all supplies of goods and services (hereinafter referred to as "Goods and Services") provided by you as supplier (hereinafter referred to as "Supplier") to companies within GA Actuation Systems GmbH shall exclusively be subject to these General Terms and Conditions of Purchase. Basic contracts or individually negotiated agreements between the parties, however, shall have precedence. Any modifications or amendments to these General Terms and Conditions of Purchase shall not be valid unless made in writing which shall include any textform or use of e-mail. The same shall apply to any changes to this requirement of the written form. General terms and conditions of Supplier shall not apply even if not expressly rejected case-by-case.

II. Orders

1.
No order, transaction or call-off as well as any variations thereto shall be binding unless made in writing.
2.
Where any order placed is not accepted by written order confirmation within 2 weeks after receipt any subsequent acceptance shall be deemed to constitute a counter offer which may be accepted or rejected by us. If not rejected within 2 weeks after receipt call-offs shall become binding upon expiry of such 2 weeks period at the latest.
3.
Any subcontracting by Supplier shall be subject to our consent.
4.
We reserve the right to require modifications even after contract conclusion to the Goods to be supplied or Services to be rendered provided, however, that such modifications shall be reasonable for the Supplier. Any consequences resulting in an increase or decrease of costs and affecting the agreed delivery schedule shall be reasonably taken into account.

III. Prices/Conditions of Payment

1.
The price of the Goods or Services as stated in the order shall be binding and unless expressly otherwise agreed shall include delivery "carriage paid" or DDP (Incoterms 2000), including packing, insurance, unloading, taxes, customs clearing formalities and duties. No price increase shall be valid unless confirmed in writing.
2.
Invoices shall be submitted separately and in correct form following delivery of the Goods or provision of the Services inclusive of an adequate number of copies for their processing.
3.
Unless otherwise agreed in writing invoices shall be paid in a normal business manner and in the currency valid at our factory's place of business within 14 days after delivery of the Goods or provision of the Services and receipt of the invoices, subject to a 3% discount deduction or net within 90 days thereof.

The payment period agreed shall start on the 1st or the 16th of the month, whichever comes last after the delivery of the goods and the invoice.

4.

We shall be entitled to any rights to set-off or to any retention rights to the extent prescribed by the applicable law.

IV. Packing

Unless otherwise agreed case-by-case or lacking reference to specific packing standards the Goods shall be packed in a manner suitable to avoid transportation damages. Packing materials shall only be used to the extent necessary to this purpose and in accordance with the EU Directive 94/62/EG dated 20.12.1994 on Packaging and Packaging Waste. Recyclable packing materials shall be returned to Supplier free of freight charges. Supplier shall be liable with regard to environmental compatibility of any supplied packing materials and for any consequential damages resulting from any such breach of contract.

V. Time for Delivery

1.

Delivery dates stated in the order shall be binding. Supplier shall strictly be liable without limitations and irrespective of culpability for the timely procurement of subcontracted preliminary supplies or ancillary services as required for the delivery of the agreed Goods and provision of the agreed Services.

2.

Supplier shall undertake to promptly inform us in writing in the event that incidents occur or become apparent which may result in delays in the agreed delivery dates.

3.

Where failure to meet agreed delivery dates should be due to culpable delay we shall be entitled to claim liquidated damages for any supplemental costs incurred (such as transport, insurance, storage etc.), however, such damages shall not exceed 10% of the value of that part of the Goods and Services so delayed. We shall reserve the right to claim higher damages subject to provision of substantiated evidence.

4.

Non-observance of agreed delivery dates shall constitute a fundamental breach of contract and shall entitle us to terminate the contract forthwith without grace period notification or notice of default and to claim damages for non-performance.

VI. Transfer of Risk / Documents

1.

Unless otherwise agreed case-by-case the actual time of delivery and transfer of risk shall be as determined by DDP Incoterms 2000 clause.

2.

Risk shall be transferred as based on the Supplier's obligation in accordance with para III.1 hereinabove after unloading by Supplier at the named place of destination.

3.

Where our order should state an order number, inventory or article number Supplier shall note such number on any and all shipping documents and packing slips. Supplier shall be liable for our additional processing expenditures and for consequences for resulting delays caused by incorrect or lacking numbering.

VII. Quality and Documentation

1.

Unless otherwise agreed Supplier shall at least observe such product liability regulations applicable at our factory's place of business being party to this contract, the generally recognized standards of technology, safety requirements and agreed technical data and shall for this purpose and at his own costs install, maintain and provide evidence thereof, a suitable quality management system (such as DIN EN ISO 9000 ff, ISO/TS 16949 or equivalent). In case of failure to observe of such requirements the Goods shall be deemed not suitable for the purposes for which goods of the same nature are normally used.

2.

We reserve the right to satisfy ourselves on the manufacturing site as to the effectiveness of the quality management system. Any variation in the specified product features or of those manufacturing processes having influence on the product features shall be notified or agreed with us.

3.

Supplier shall continually audit the quality of the agreed Goods. The parties to this contract shall inform each other of any possible way to improve the achieved quality.

4.

Where method and extent of quality auditing as well as means and measures thereof are not agreed upon we are ready, upon Supplier's request, to discuss such audits as far as practical, based on our know-how and experience.

5.

With regard to those features specifically marked in the technical documents Supplier shall document separately when, by which method and by whom the Goods have been audited in terms of such features and what results had been produced by the audits. Supplier shall make certain that any materials used in the manufacturing of such special features and their manufacturing process itself may be traced back by means of suitable markings.

6.

Any auditing documentation shall be stored for a period of fifteen years and made available to us if so required. Within the limits provided by the applicable law Supplier shall commit his subcontracts to the same storage obligation stipulated herein.

VIII. Secrecy

1.

Supplier undertakes to treat secret any and all commercial and technical information not publicly known of which he becomes aware in the course of our business relation.

2.
Supplier undertakes to strictly keep secret any and all drawings, models, moulding tools, samples, reproductions, calculations, and any other documents and information received. Such documents and information may not be made available or disclosed to any third party without our express prior consent. Supplier shall only be entitled to reproduce or copy such documents as required in the normal course of business and subject to the limitations by applicable copyright regulations.

3.
Supplier shall commit his subcontractors to corresponding obligations.

4.
Supplier shall not advertise our business relationship without our prior written consent.

IX. Damages for Breach of Contract and Recourse

1.
Supplier shall guarantee that the Goods and Services supplied hereunder shall be free from defects, posses the expressly warranted characteristics and meet our requirements.

2.
We undertake to inspect the Goods received within a reasonable period of time as to apparent quality or quantity non-conformance. Any complaint from our part shall be deemed to be made in due time if and when received by Supplier within a reasonable period of time after completion of our incoming inspection.

3.
We reserve any and all rights and damages to the full extent provided by law in relation to breach of contract including breach of warranty of the Goods and Services supplied.

4.
The warranty period for defects shall cover 2 years beginning at the time of supply of Goods or Services.

5.
Should Supplier be responsible for a defect in the supplied Goods or Services we shall be entitled at our option to require that Supplier should at his expense repair or replace the defective Goods or Services. Costs and expenses to be born by Supplier shall in particular include transportation, travel, work and material costs or expenses for extraordinary incoming inspection.

6.
This warranty obligation stipulated in the present General Terms and Conditions of Purchase shall also apply to any replacement parts or repairs of the Goods or Services supplied.

X. Warranty of Title and Infringement of Industrial Property Rights

1.
Supplier shall represent that the supply of Goods and Services hereunder shall not constitute or result in any violation of rights and in particular any violation of laws, ordinances or any other official regulations.

2.

Supplier represents that he owns full title in any and all Goods supplied hereunder and that such Goods are not prejudicial to third party rights (such as industrial property rights, copyrights, liens, other creditor's rights from assignment of claims or from other collateral securities, factoring, hire purchase, purchase under reservation etc.).

3.

Should any third party assert a claim against us in connection with the supply of Goods and Services for infringement of industrial property rights hereunder Supplier shall hold us free and harmless from any such claims on first written demand.

4.

Supplier's obligation to hold us free and harmless refers to any and all expenditures and costs necessarily accrued in connection with such third party claims.

XI Product Liability

1.

Where Supplier is liable for product defects he shall hold us free and harmless on first demand from third party claims for damages. Supplier shall in particular be liable where the cause for product liability lies within Supplier's sphere of control or organization and he himself would be liable vis-à-vis such third party.

2.

Within the aforementioned bounds Supplier shall further be obliged to reimburse any expenses accrued from or in connection with any product recall conducted by us. As far as it is reasonable and possible we shall notify Supplier of nature and extent of any recall measures to be taken by us and afford the opportunity for the Supplier to comment.

3.

Supplier shall undertake to obtain product liability insurance in the extent of cover as required by us. Any further claims for damages shall remain unaffected.

4.

Unless otherwise agreed insurance coverage shall extend to the whole of Europe and shall be in accordance with the respective maximum amounts of liability as stipulated by Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (product liability directive) or respective national laws. Supplier shall immediately provide us with copy of such valid insurance policy.

XII. Liability for Environmental Compatibility

Supplier shall undertake to observe any environmental laws and regulations applicable at the seat of business of our factory being party to this contract concerning manufacturing and condition of the Goods and Services supplied hereunder. The same shall apply with regard to subcontracted goods or ancillary services. In particular Supplier shall guarantee that Goods and Services supplied hereunder shall be free from hazardous substances. Supplier shall be liable for the environmental compatibility of any Goods or Services supplied hereunder and for any consequential damages resulting from failure to meet environmental obligations or from the Goods and Services containing hazardous substances.

XIII. Place of Performance and Jurisdiction

1.

Place of performance shall be the seat of business of our factory being party to this contract.

2.

Any disputes arising out of or in connection with this contractual relationship including disputes over valid contract conclusion, contract modifications or termination shall be finally settled by a single arbitrator appointed by the president of the branch of the International Chamber of Commerce (ICC) in charge at the seat of business of our factory in accordance with the ICC Rules of Conciliation and Arbitration.

3.

Instead of instituting an arbitration claim we shall, however, be entitled to commence legal court proceedings. Place of jurisdiction in that case shall be the seat of business of our factory being party to this contract. At our option we may also institute legal proceedings at Supplier's head or branch offices.

XIV. Miscellaneous

1.

Unless otherwise agreed the contract language shall be English.

2.

This contract shall be governed by the material laws with the exception of conflict of laws provisions applicable at the place of jurisdiction (lex fori). With regard to international cross border transactions the United Nations Convention on Contracts for the International Sale of Goods – CISG of 11 April 1980 shall apply. Unless otherwise stipulated by CISG the legal relationship of the parties to this contract shall be governed by the material laws with the exception of conflict of laws provisions applicable at the respective place of jurisdiction.

3.

Supplier agrees that we may store and process Supplier's personal data received in the course of or in connection with the business relationship to the extent allowed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

4.

Where any individual provision of these General Terms and Conditions of Purchase or of any provision applying to any other further contractual agreements be or become invalid the remaining provisions of these Terms and Conditions or the remains of the agreement shall not be affected. In this event the parties to this contract shall be obliged to replace the invalid provision by a provision that reflects the intended commercial results as closely as possible.