

# General Terms and Conditions of Purchase of DATA MODUL AG – Valid as of December, 2009

## 1. General - Scope

1.1. The General Terms and Conditions of Purchase have exclusive validity. We do not accept any terms deviating from or in conflict with these Terms, unless we have agreed to them explicitly in writing or in text form (e.g. by e-mail or fax). Our General Terms and Conditions of Purchase shall also apply if we are aware that the Supplier's terms contradict or deviate from our Terms and Condition of Purchase and accept delivery from the Supplier without reservation.

1.2. Our Terms and Conditions of Purchase shall also apply to all future business dealings with the Supplier.

1.3 These Terms shall also apply to companies, legal persons under public law and special funds of public law within the meaning of § 310 par. 1 of the German Civil Code, BGB.

## 2. Offer - amendment to and suspension of performance - offer documents

2.1. Orders from us must be in writing or text form (e.g. by e-mail or fax). Oral agreements are only binding if we have confirmed them in writing or in text form (by e-mail or fax). Any kind of correspondence must refer to only one purchase order at a time, quoting our respective purchase order number.

2.2. The Supplier is obligated to confirm our purchase order in writing or in text form (by e-mail or fax) within a reasonable period of time, however, no later than two (2) weeks after receipt. After expiry of the aforementioned period, we are no longer bound by the purchase order.

2.3. The contract shall not be deemed concluded until we have received the order confirmation in due time.

2.4. Changes to and adjustments of the scope of the goods, services and specifications, in particular those requested by us for reasons of technological advancement or safety related aspects, shall be included in the price if they can be reasonably implemented by the Supplier without significant cost increase.

2.5. Furthermore, changes and supplements to the goods and services ordered must be executed upon our request subject to the same terms and based on the agreed prices, provided they relate to the intended purpose of the goods or services ordered. In the absence of agreed prices, the parties will set these in good faith. We shall be entitled to any price reductions resulting from such changes. Any changes to the period of performance shall be mutually agreed and adjusted accordingly.

2.6. We are entitled to suspend temporarily delivery of portions or the entire products and services at any time without immediate explanation. Upon the Supplier's request, the reasons and the expected duration of the suspension shall be subsequently communicated.

2.7. The Supplier is entitled to demand reimbursement from Data Modul of any additional costs incurred as a result of the temporary suspension pursuant to section 2.6, unless (i) the suspension is due to a breach of obligation by the Supplier, or (ii) the suspension is warranted due to legal considerations relating to danger or safety and which is not our fault. The Supplier has the burden of proof with regard to the additional costs incurred and is obligated to reduce such costs by reasonable measures (e.g. redeployment of employees) in consultation with us. Insofar as the suspension of performance exceeds a period of three (3) months, the Supplier has the right to withdraw from the contract in accordance with the scope of the suspension of performance.

2.8. We reserve rights of ownership and copyrights for illustrations, drawings, calculations and other documents. These may not be made accessible to third parties without our explicit consent in writing or in text form (e.g. by e-mail or fax). They shall be used exclusively for manufacture as per our purchase order and must be returned to us without prompting upon completion of the work. They must not be kept confidential and not disclosed to third parties. To this respect, section 13.5 shall apply as a supplement.

## 3. Pricing and terms of payment

3.1. The price specified in the purchase order shall be binding. Unless otherwise agreed upon in writing or in text form (e.g. by e-mail or fax), the price shall include delivery "free domicile" as well as packaging. The return of packaging shall be agreed separately.

3.2. Statutory VAT is included in the price.

3.3. We can only process invoices stating our purchase order number – as stipulated in our purchase order. The Supplier is liable for any consequences arising from non-compliance with this obligation, unless the Supplier can provide proof that it is not responsible for such non-compliance.

3.4. If not agreed upon otherwise in writing, we shall pay the purchase price within 14 days from delivery and receipt of invoice with a 2% discount or net within 30 days after receipt of invoice.

3.5. We are entitled to the right to offset and the right of lien to the extent allowed by law.

## 4. Delivery period

4.1. The delivery period specified in the purchase order shall be binding. Deliveries prior to the agreed delivery date are not permitted without our consent, which shall be in writing or in text form (by e-mail or fax).

4.2. The Supplier is obligated to inform us immediately in writing or in text form (e.g. by e-mail or fax) if circumstances occur or become known to same, which indicate that the agreed delivery period cannot be met.

4.3. In the event that a delay in delivery occurs, we are entitled to claim a contractual penalty of 1% of the price of the product to be delivered, but no more than 5%, for each full week of delay. We reserve the right to assert further rights and claims. The Supplier is entitled to prove to us that no or no significant damage has occurred due to the delay. We are obligated to declare the reservation of our right to assert the contractual penalty no later than at the time of payment of the invoice received after delivery of the delayed shipment.

## 5. Shipment

All deliveries must include a detailed packing slip or delivery slip with an accurate statement of contents of the consignment as well as our purchase order number. In the case of shipments from abroad, a detailed dispatch note stating the information specified above must be sent on the day of dispatch of the goods, irrespective of the issue of an invoice. In the event of non-compliance with our General Terms and Conditions of Purchase and the shipping instructions, we are entitled to refuse acceptance of the goods at the Supplier's expense and risk.

## 6. Packaging

The Supplier is liable for proper packaging of the goods. Any loss or damage to the ordered goods resulting from inappropriate packaging shall be charged to the Supplier. In case of doubt, any loss or damage occurring during shipment shall be deemed the result of improper packaging.

## 7. Invoicing

The invoice must be sent immediately after dispatch of the goods, issued in triplicate and specifying the exact purchase order details. The second and third copy of the invoice must be clearly designated as such. Each purchase order shall be invoiced individually.

## 8. Transfer of risk – documents

8.1. If not agreed in writing otherwise, delivery shall be "free domicile", i.e. the risk of accidental loss or accidental deterioration of the goods shall pass to us upon proper and complete delivery at the designated destination.

8.2. The Supplier is obligated to state our exact purchase order number on all shipping documents and delivery notes. In case of non-compliance, we shall not be liable for any delays in processing.

## 9. Investigation of defects – liability for defects

9.1. We are obligated to examine the goods within a reasonable period of time for any deviation in quality and quantity. The complaint is deemed timely if it is received by the Supplier within 5 working days of receipt of the goods or, in case of hidden defects, upon discovery of same.

9.2. We are entitled to statutory claims for defects without restriction and are entitled to request that the defects be remedied or that a new item be delivered at our discretion in any case. In this case, the Supplier is obligated to bear all expenses required to remedy the defects or deliver a replacement. We expressly reserve the right to compensation for damages, in

particular the right to compensation instead of fulfillment of obligation.

9.3. In the event of imminent danger, we are entitled to remedy damages at the Supplier's expense after giving corresponding notice to the Supplier.

9.4. The warranty period is 36 months, from transfer of the risk.

#### **10. Changes in execution**

Changes in the nature or composition of the processed materials or the structural design compared to previously delivered similar goods and services must be reported to us by the Supplier prior to the start of production. These changes require our prior consent, which shall be in writing or in text form (e.g. by e-mail or fax).

#### **11. Industrial property rights**

11.1. The Supplier warrants that no third party rights, in particular, no existing patents, utility models, copyrights and other industrial property rights, are being infringed in connection with its delivery, unless it proves that it is not liable for the violation of duties.

11.2. If a third party asserts a claim against us owing to an infringement as per the foregoing, the Supplier shall indemnify us from such claims upon first written request. We are not entitled to conclude any agreements, in particular, to conclude a settlement, with the third party without the Supplier's consent.

11.3. The Supplier's obligation to indemnify applies to all expenses that we are forced to incur as a result of or in conjunction with the claim asserted by a third party.

#### **12. Ownership of documents and inventions**

12.1. The ownership and rights to all designs, drawings, calculations, specifications, software and other documents that are created by the Supplier for us pass to us, regardless of form. The Supplier undertakes to ensure that all copyrights and neighboring rights to such documents are transferred to us. Insofar that a transfer is not possible legally, the Supplier hereby grants us the exclusive right of use of the aforementioned rights without limitation as to territory, time and scope.

12.2. If and when the Supplier or its employees make an invention, discovery or further development (hereinafter collectively referred to as "Inventions") as part of the activities under the contract, the Supplier shall inform us of such Inventions immediately. The Supplier hereby cedes these Inventions to us. Insofar as these Inventions or part of same are patentable, the Supplier shall utilize its employees' inventions with no restrictions and likewise cede them to us after consultation with us. The Supplier shall also provide us with all the necessary information when the initial patent application is filed. Insofar as the Supplier's employees have a right to compensation in connection with these inventions due to statutory requirements or for other reasons, such compensation shall be to the Supplier's account.

#### **13. Retention of title – provision - tools - secrecy**

13.1. A simple retention of title by the Supplier will be accepted until full payment of the delivered goods. Special forms of retention of title, in particular, an assigned, subsequent and/or extended retention of title and/or retention of title by the group will not be recognized.

13.2. In the event that we provide parts to the Supplier, we shall retain the title of ownership to such parts. Processing or modification by the Supplier shall be performed for us. If our conditional goods are processed with other objects not owned by us, we shall acquire co-ownership of the new item in proportion to the value of our item relative to the other processed objects at the time of processing.

13.3. If the item provided by us is inseparably mixed with other objects not owned by us, we acquire co-ownership of the new item in proportion to the value of the conditional item provided relative to the other mixed objects at the time of mixing. If the mixing takes place in such a manner that the Supplier's item must be viewed as the main item, it is deemed agreed that the Supplier shall assign co-ownership to us proportionately and that the Supplier shall hold sole ownership or co-ownership on our behalf.

13.4. We shall retain ownership of tools. The Supplier is obligated to use the tools exclusively for the manufacture of the goods ordered by us. The Supplier is obligated to insure the tools that belong to us at reinstatement value for damage or loss due to fire, water and theft at its own expense. The Supplier shall be obligated to carry out any and all servicing and inspection work as well as all maintenance and repair work on our tools in due time at its own expense. It shall notify us immediately of any and all malfunctions, and if it culpably fails to do so, damage compensation claims shall not be affected.

13.5. The Supplier is obligated to keep all illustrations, drawings, calculations and other documents and information it receives strictly confidential. These materials may only be made available to third parties with our express consent in writing or in text form (e.g. by e-mail or fax). The obligation of secrecy shall also apply after this contract has been completed and shall lapse if and to the extent that the production know-how contained in the illustrations, drawings, calculations and other documents it received becomes public domain.

13.6. Insofar as the rights in security which we are entitled to pursuant to sections 13.2 and 13.3 exceed the purchase price of all of our conditional goods for which payment has not been made by more than 10%, we are obligated to release the rights in security at our discretion upon the Supplier's request.

#### **14. Product liability – right of indemnity - liability insurance coverage**

14.1. The Supplier is responsible for all claims for personal injury or damage to property asserted by third parties that can be attributed to a defective product it has supplied and is obligated to indemnify us from the resulting liability.

14.2. The Supplier is also be obligated to reimburse any expenditures pursuant to §§ 683, 670 German Civil Code (BGB), or pursuant to §§ 830, 840, 426 German Civil Code (BGB), arising from or in connection with a product recall carried out by our company as part of its liability for damages within the meaning of section 14.1. We shall notify the Supplier of the contents and scope of the recall measures to be carried out – to the extent possible and reasonable - and give it an opportunity to state its opinion. Other statutory claims shall remain unaffected.

14.3. The Supplier is obligated to maintain appropriate product liability insurance. If we are entitled to further damage claims, they shall remain unaffected. Upon request, the Supplier shall make a copy of the liability insurance cover policy available to us at any time.

#### **15. Subcontractors**

15.1. The Supplier may not subcontract fulfillment of the contractual obligations entered into to other entrepreneurs as a whole or in part without our prior consent, which shall be in writing or in text form (e.g. by e-mail or fax). The Supplier is not released from its obligations of performance as a result of any consent to the use of subcontractors and therefore remains fully responsible to us. The Supplier is liable for services provided by subcontractors in the same way it is liable for its own products and services.

15.2. When it contracts subcontractors, the Supplier shall ensure that such subcontractors are committed in accordance with the provisions of the contract, including these contractual Terms. Upon request, the names of all of the subcontractors contracted by the Supplier must be disclosed to us, and we must be provided with evidence of the scope in which the subcontractors have been committed as per the foregoing.

#### **16. Place of fulfillment – place of jurisdiction - applicable law**

16.1. If the Supplier is a merchant, our place of business shall be the seat of jurisdiction. However, we are entitled to bring charges against the Supplier at the court of its domicile.

16.2. Unless stipulated otherwise in the purchase order, our registered offices shall be the place of fulfillment.

16.3. With the exception of the UN Law of Purchase, the law of the Federal Republic of Germany shall apply for all legal relationships arising from this contract for the parties and their legal successors, including the conclusion of the contract and any ancillary business.