Dürr Terms and Conditions of Purchase 2016

Version: 01. April 2016; adopted for Sweden 2022-03-15

§ 1 General – Scope

1. Our Terms and Conditions of Purchase shall apply exclusively; we do not acknowledge any conflicting or deviating terms and conditions of the Supplier unless we have expressly agreed in writing to their application. Our Terms and Conditions of Purchase shall also apply in cases where we accept without reservation the deliveries and/or services by the Supplier in the knowledge of contradictory Supplier's terms or Supplier's terms deviating from our Terms and Conditions of Purchase.
2. Any correspondence shall be conducted with our purchase department placing the order. Any arrangements with other departments require the express written confirmation by the purchase department placing the order to become valid.
3. Our Terms and Conditions of Purchase shall only apply to entrepreneurs.

§ 2 Order – Order Documents

1. If the Supplier fails to accept our order in writing within a period of 2 weeks after the receipt of the order, we are entitled to cancel the order.
2. We reserve our ownership rights and copyrights to depictions, drawings, calculations, software and other documents; they may not be made accessible to third parties without our prior written consent; they may solely be used for production based on our order and shall be returned to us automatically after the order has been processed or upon our request without undue delay; they shall be kept secret from third parties; to such extent, the provision in § 10 (3) hereof shall apply in supplement.

§ 3 Prices – Terms of Payment

1. The price stated in our order is binding. Unless otherwise agreed, the price shall include the costs of carriage, the costs to receive the goods at the place determined in our order and the costs of appropriate packaging. The return of packaging material is subject to separate agreement.
2. Supplier shall bear all accruing customs, taxes, duties and other importation costs arising from the order.
3. Prices are exclusive of applicable statutory value-added tax.
4. We can only process invoices which indicate the order number shown in the order; the Supplier shall be responsible for all consequences arising from the failure to comply with this obligation, unless he can prove that he is not liable for these consequences.
5. We are entitled to rights of set-off and retention to the extent provided by law.
6. The Supplier is not entitled to assign his receivables against us or have them collected by a third party.
7. The Supplier is only entitled to set-off claims against us or to assert a right of retention if and to the extent his claims are uncontested or his counterclaim has been finally adjudicated.

§ 4 Delivery

1. The periods and/or dates indicated in the order are binding.
2. The Supplier shall inform us in writing without undue delay when circumstances arise or he becomes aware of circumstances from which follows his failure to comply with the agreed periods and/or dates. The agreed periods and/or dates shall not be extended by such information.
3. In the event of a Supplier's delay we are entitled to the rights provided by law. In particular, we are, after unsuccessful expiration of a reasonable grace period, entitled to claim damages instead of delivery and to the rescission of the contract. If we claim damages, the Supplier is entitled to prove that he is not liable for the breach of duty.
4. Early deliveries or partial deliveries may only be made upon our prior written consent.
5. Transport insurance shall be taken out and borne by us.

§ 5 Transfer of Risk – Documents

1. Unless otherwise agreed in writing the Supplier is liable for any loss or damage of the delivered goods until the goods are received and accepted by us.
2. The Supplier shall exactly indicate our order number on all shipping documents and delivery notes; in the event he fails to comply with this obligation, we are not liable for any delays in the processing and payment of invoices.

§ 6 Quality – Environmentally Sound Performance – Management System – Documentation

1. Provided nothing to the contrary has been agreed, the Supplier shall always execute the deliveries and/or services in accordance with the latest state of technology and shall advise us of any opportunities for improvements and technical modifications. The Supplier shall inform us in good time prior to changes in production procedures or facilities, materials or supplied parts for the deliveries and/or services, relocations of production sites, furthermore of changes in quality assurance measures, particularly procedures or facilities for testing deliveries and/or services which have an effect on the ordered deliveries and/or services so that we may examine whether the changes could have a negative consequence on us. Depending on the nature and scope of the changes, we will decide whether our approval is required. This obligation to inform is not applicable, when the Supplier, following a careful review, can verifiably rule out such negative consequences.
2. The Supplier shall, within the limits of the commercial and technical possibilities, provide the deliveries and/or services as well as the deliveries and/or services of third parties in an environmentally sound manner. An environmentally sound performance includes, but is not limited to, the selection of environmentally sound materials and production procedures for the product design (e.g. low emission, low pollutant and low waste designs, as well as dismantling friendly designs), the use of environmentally friendly and recyclable lubricants and generally, solutions preserving the resources (e.g. with respect to the consumption of energy and materials).
3. Provided nothing to the contrary has been agreed, the Supplier shall provide the deliveries and/or services in such manner that the entire delivery chain, including, but not limited to, development, design, manufacture, packaging, transport, installation, operation, cleaning, maintenance, repair and disposal is in compliance with the applicable statutory and governmental regulations, provisions, rules, guidelines, and other legal norms applicable at the place of production as well as at the place of use determined by us, particularly those governing quality, environmental protection, industrial safety, transport safety and product safety.
4. Supplier is obliged to determine and maintain the current status of the legal norms stated in § 6 (3) hereof. Changes in the legal norms having a direct or indirect impact on the deliveries and/or services shall be reported to us without undue delay.
5. To implement the requirements provided

under § 6 (3) and (4) hereof, the Supplier shall install, apply and refine a suitable management system customary to the industry. The management system shall include the delivered goods and/or services of the sub-suppliers of the Supplier. If the Supplier maintains a certified management system (e.g. pursuant to ISO 9001, VDA 6.4, ISO 14001 or a comparable standard, each as amended from time to time), he shall regularly and on his own accord provide us with the respective certificates, i.e. on the occasion of the first delivery as well as of any follow-up delivery, and of any update of the certificate.
6. Within the scope of his management system the Supplier shall maintain an appropriate, documented quality assurance system. He shall design his quality assurance system in such a manner that it always complies with the latest state of technology. The Supplier shall document his quality tests and provide us with the records upon request without undue delay and free of charge.
7. The Supplier hereby agrees to audits by us or by a party appointed by us to evaluate the effectiveness of his management system and, if appropriate, upon involvement of our (end) customer. Legitimate interests of the Supplier, including, but not limited to his interest to maintain secrecy, shall be taken into account during the audits. Audits shall be announced to the Supplier in good time, but at least 2 weeks in advance.
8. The Supplier shall impose the same obligations on his sub-suppliers; furthermore he shall promote and demand compliance with the obligations laid down in this § 6 from his sub-suppliers to the best of his abilities.

§ 7 Initial Inspection

1. Provided we are obliged to inspect the delivered goods and issue a notice of defect pursuant § 377 (1) HGB (German Commercial Code), we will inspect the goods without undue delay upon receipt to establish whether they conform to the quantity and type ordered, and whether there are any shipping damage or defects visible on the outside.
2. If we discover a defect during the aforementioned inspections, we will report this to the Supplier. If we discover a defect at a later time, we will report this as well to the Supplier.
3. Notices of defect shall be given within one month after delivery of the goods and/or services or, if the defects were not discovered prior to processing or bringing into service, as of their discovery.
4. We have to attend no further duties towards the Supplier than the aforementioned inspections and notices.

§ 8 Defects – Liability for Defects and other Liability

1. The Supplier warrants that all of his deliveries and/or services are in compliance with the latest state of technology and with the agreed properties/specifications and other requirements made. The Supplier warrants that all of his deliveries and/or services are free of defects (including but not limited to defects in design, production and material) and that they are suitable for the special purposes for which we have ordered them.
2. We are entitled without restriction to the statutory rights for claims for defects; in any event, we are entitled to claim from the Supplier, at our choice, the remedy of the defect or the delivery of a new item. We expressly reserve the right to claim damages and particularly to claim damages instead of delivery.
3. The Supplier is liable for his representatives and sub-contractors to the same degree as for his own culpable acts.
4. We are entitled to remedy the defects ourselves at the Supplier's expense in the event of imminent danger or a special need for swift action.
5. The statutory period of limitation for rights for claims due to defects against the Supplier shall be 36 months, commencing on the date of transfer of risk. This is not applicable in cases when the law provides for longer periods; in such cases, the statutory period of limitation shall apply.
6. Otherwise, the Supplier is liable under the statutory provisions without any limitation or exclusion in terms of the grounds or the amount.
7. Our payment does not imply that we acknowledge the delivery and/or service as according to contract or as free of defects.
8. Our consent to the Supplier's technical documents and/or calculations does not affect his liability for defects.

§ 9 Product Liability – Third Party Insurance Coverage

1. In the event a product liability claim or manufacturer's liability claim is asserted against us, the Supplier is obliged to hold us harmless from and against such claims, provided he is responsible for the fault giving rise to the liability. Where we are required under our manufacturer's liability to carry out a recall and/or service due to a defective product delivered to us by the Supplier, the Supplier shall bear any and all associated costs. Any further rights under statutory law remain unaffected.
2. Within the scope of his duty to indemnification, the Supplier shall, pursuant to Produktansvarslagen 1992:18 (Swedish Product Liability Act), reimburse all of our costs resulting from or in connection with third party claims, including any recalls and/or services conducted by us. Any further rights under statutory law remain unaffected.
3. In the event of a third party claim against us, the Supplier assures us his comprehensive and prompt support in investigating the circumstances and handling the case.
4. The Supplier undertakes to maintain sufficient business/public liability and extended product liability insurance with coverage of at least € 1 million (or 10 MSEK) per case of personal injury/property damage – all in – for the duration of the contract; however, our claims are not limited to the amount of coverage.
5. If there is reason to suppose that delivered goods and/or services do not conform to the applicable safety requirements, or that even during intended use a significant danger arises from the delivered goods and/or services, we are entitled to demand from the Supplier a proof of compliance with the equipment safety and product safety regulations. If the Supplier fails to provide this proof within a reasonable period, we are entitled to rescission of the contract.

§ 10 Retention of Title - Materials and Tools – Secrecy

1. Materials and parts provided by us remain our property and shall be stored separately, labeled and managed free of charge. Provided materials and parts may only be used for their intended purpose. The processing of materials and the assembly of parts is undertaken for us. There is mutual agreement that we are co-owner of the total product manufactured by using our materials and/or parts in the ratio of the value of the provided materials and parts, which are held in safekeeping for us by the Supplier.
2. We retain title to the tools and/or models

provided by us as well as to our software and other related documents or information. The Supplier is obliged to use the tools, models, documents, information and/or software belonging to us solely for the manufacture of the goods ordered by us.
3. The Supplier is obliged to keep all depictions, drawings, calculations, software and other documents and information received by us strictly secret. They may only be disclosed to third parties with our prior written consent. This secrecy obligation shall survive the completion of this contract; it shall cease if and to the extent the production know-how contained in the provided depictions, drawings, calculations, software and other documents is in the public domain.

§ 11 Fulfillment of Contract at Risk

If the economic situation of the Supplier deteriorates in such way that the fulfillment of the contract is seriously at risk, or he (also temporarily) ceases payments, or an application for insolvency is filed, or a court or out-of-court settlement is composed, we are entitled to rescind the unfulfilled portion of the contract. We are entitled to rescission of the entire contract if a partial fulfillment of the contract is of no interest to us.

§ 12 Foreign Trade Law – Forbidden Materials – Supplier Declarations

1. The Supplier shall provide the following information in offers and order confirmations:
(i) statement whether the delivery and/or service is subject to export control and statement of the relevant list number under Swedish Export Law;
(ii) statement whether the delivery and/or service is recorded in the U.S. Commercial Control List (U.S. CCL) and the relevant list number;
(iii) statement whether the delivery and/or service is subject to export control under the applicable EC Dual-Use Regulation and the relevant list number;
(iv) statement of the statistical commodity code number and of the country of origin of the delivery and/or service. In case of deliveries and/or services destined, according to our notifications to the Supplier, for Iran (directly or indirectly), the Supplier shall also declare whether the deliveries and/or services in question are subject to export control under EC Law pursuant to EC Regulation 961/2010 or other updated EC regulations, as well as the relevant list number of the most current annex. In case of deliveries and/or services destined, according to our notifications to the Supplier, for other countries, the Supplier shall inform us whether other export restrictions exist under Swedish and/or EC Law and/or foreign trade law of other states. For the relevant declarations, the Suppler shall use the form “Declaration of Export Restrictions” which we make available to the Supplier at http://www.durr.com/en/company/purchasing.html under „Export Restrictions“. In the event that a required export license is refused, we expressly reserve the right to rescind the contract.
2. The Supplier shall comply with existing prohibitions of substances resulting from legal norms. The Supplier shall ensure that the deliveries and/or services including their packaging delivered by him or by third parties appointed by him do not contain or emit any risk substances endangering the environment or health, which are not allowed under law for the intended use, and particularly for the use intended by us and communicated to the Supplier, as well as for foreseeable misuses at the place of production or at the communicated place of usage, or on the way to such place. The cases of use allowed in exemptions as well as all CMR-substances (carcinogen, mutagen, reproduction toxic) are to be avoided. Deviations from the rules of this provision shall be substantiated to us in a credible manner and will only be permitted by us if a substitution of the substance by an innocuous substance is not possible.
3. For each delivery and/or service, the Supplier shall provide us with proof of legal compliance and the information required by law (e.g. safety data sheets, type test certificates, test certificates, professional certificates, other certifications, proofs of qualification) generally together with the offer, but no later than with the order confirmation. The Supplier shall enclose these proofs and all documents required for bringing into circulation (e.g. declarations of conformity and/or installation) to each delivery, and shall label the delivered goods in accordance with the legal requirements. The same applies in the event of changes to the scope of goods and/or services having an impact on the use intended by us at the place of usage notified by us, also under consideration of foreseeable misuse concerning the aspects of delivery restrictions and/or service restrictions listed in § 12 (2) hereof.
4. The Supplier is obliged to declare to us the substances contained in his delivered goods with indication of the relevant CAS-registry numbers (“Chemical Abstracts Service”), the proportional weight in homogenous materials and the safety data sheets, provided these materials are listed in one of the following regulations: - REACH (EC Regulation 1907/2006), particularly the REACH candidate list for materials subject to approval; - Forbidden Chemicals Regulation (“Kemikalieförbudsförordningen (2021:1007 & 1998:944)”, implementation of directive 76/769/EEC and related amendments); - Chemicals-Ozone Layer Regulation (“Förordningen (1995:636) om ämnen som bryter ned ozonskiktet”); - Scrapped Vehicles Regulation (“Bilskrotningsförordning (2007:186)”, implementation of directive 2000/53/EC); - Electrical and Electronic Devices Act (“Förordning (2012:861) om farliga ämnen i elektrisk och elektronisk utrustning””, implementation of directive 2002/95/EC and directive 2002/96/EC); - Battery Act (“Förordningen om producentansvar för elutrustning (2014:1075) och batterier (2008:834)”, implementation of directive 2006/66/EC)
5. The Supplier shall confirm to us the origin of the delivered goods in compliance with the legal regulations, (e.g. with a supplier declaration, a declaration of origin or EUR1). In the supplier declaration, the Supplier shall state the originating status of his goods under the valid regulations of origin of the country of destination, which country we have notified to him. The reference to the delivery will be made by indication of our item number and/or our order number on the supplier declaration.
6. Our payment obligation under § 3 hereof is subject to the receipt of all of the information and documentation requested above.

§ 13 Technical Documentation

1. The delivery of technical documentation and all requested protocols shall be a constituent part of the main delivery.
2. The technical documentation shall be delivered on trade standard data media in a machine-readable form, provided nothing to the contrary is agreed.
3. The technical documentation shall be drawn up in accordance with the EC Machine Directive and shall be in compliance with the generally acknowledged rules of technology.
4. The operating instructions shall be drawn up in accordance with IEC 82079-1.

§ 14 Rights of Use – Intellectual Property Rights

1. The Supplier grants to us the non-exclusive, transferable, worldwide and perpetual right to use, to integrate into other products and to distribute the delivered goods, partial deliveries thereof and/or performance of the Supplier. The Supplier undertakes not to assert his intellectual property rights to oppose any use of delivered goods and/or services.
2. The Supplier shall ensure that we and our customers do not infringe any intellectual property rights of third parties through the purchase, possession, offering, use, processing or resale of the delivered goods and/or services, including, but not limited to, marks, names, patents, utility patents, design patents, trade dress rights, design rights or copyrights of third parties, including equivalent applications (hereinafter collectively referred to as "Intellectual Property Rights") in the Supplier's country of origin as well as in Sweden and the European Community; the same applies for a country to which the delivered good and/or service is intended to be ultimately shipped, provided this country has been communicated to the Supplier before conclusion of contract.
3. In the event the Supplier commits a culpable breach of the duties laid down in § 14 (2) hereof, he shall indemnify us upon first demand for any and all claims of third parties resulting from such actual infringements of Intellectual Property Rights and shall bear any and all costs and expenses we necessarily incur in this context, including, but not limited to, the costs of legal action and defense, as well as the costs resulting from the observance of an omission obligation. The statutory period of limitation applicable to such claims shall not expire prior to a period of ten years from the execution of the relevant contract.
4. § 14 (2) hereof is not applicable if the Supplier has produced the delivered good and/or service in accordance with our drawings, models or other detailed information provided by us, and if the Supplier neither knew nor should have known that Intellectual Property Rights of third parties are being infringed.
5. The Supplier and we are obliged to inform each other without undue delay of known risks of infringement and alleged cases of infringement of Intellectual Property Rights, and, within the scope of what can be reasonably expected, to counteract corresponding infringement claims.

§ 15 Software

1. Software shall be delivered to us on commercially available data media in machine-readable form and including user documentation.
2. Software developed for us shall be provided to us with the source code with a manufacturer's documentation.
3. For software developed for us and the related documentation and parts thereof and all other work results, the Supplier shall procure and grant to us an irrevocable, exclusive, worldwide and perpetual right of use, for each known type of use, including the right to reprocess, reproduce, change, expand and grant of simple rights of use to third parties.
4. If our acquisition of a right of use pursuant to § 15 (3) hereof is conflicted by rights of third parties to third-party programs or other third-party work products incorporated in the delivered goods and/or services, the Supplier and we will contractually agree on the scope of our right of use in a reasonable way.
5. The Supplier is not entitled to reproduce, process or to make other use of the work results produced for us, neither in full nor in part.
6. The Supplier is not entitled to publish any of the work results of any nature produced for us - neither in full nor in part.
7. The Supplier shall procure and/or grant to us the non-exclusive, transferable, worldwide and perpetual right to use the delivered software for integration in other products, to copy it, to have used it and to have copied it by our affiliated companies as defined in Aktiebolagslagen 2005:551 (Swedish Stock Corporation Act) and by our distributors.
8. The Supplier shall procure and/or grant to us the non-exclusive, transferable, worldwide and perpetual right to license the rights of use under § 15 (3) and (7) hereof to our affiliated companies as defined in Aktiebolagslagen 2005:551 (Swedish Stock Corporation Act), to our final customers and distributors and to grant other rights of use.
9. If the procurement and granting of a right referred to in § 15 (3), (7) and (8) hereof is legally not possible, the Supplier shall inform us in writing before conclusion of the contract. In doing so, the Supplier shall also state the reasons why the procurement and granting of the right is legally not possible.
10. The Supplier warrants that no portion of the software delivered to us contains, at the time of delivery, any malware intended or capable to
(i) permit access of the Supplier or any third party to our computer systems without our authorization;
(ii) read, write, copy, change, disable, damage or erase any software or data on our computer systems without our authorization; or
(iii) perform any other actions with, on or in our computer systems without our authorization.

§ 16 Data Protection

1. Personal data shall be processed by the Supplier in compliance with the legal regulations.
2. Personal data of the Supplier will be stored and processed by us in compliance with the legal regulations.

§ 17 Venue – Place of Fulfillment – Applicable Law

1. Place of jurisdiction is the place of the registered office of our company. We reserve the right to file an action at the place of jurisdiction of the Supplier.
2. Provided nothing to the contrary is agreed, the place of fulfillment is the place of use indicated in the order, alternatively the place of our registered office.
3. The laws of the Sweden shall apply with the exception of the conflicting provisions of the private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

§ 18 Miscellaneous

1. Should individual provisions of these Terms and Conditions of Purchase or of the contract entered into between the Supplier and us be or become fully or partially invalid, this shall not affect the validity of the other provisions.
2. We are only exempted from the duty to tax deduction under Inkomstskattelagen 1999:1229 (Swedish Income Tax Act) if the Supplier provides us with a valid exemption certificate issued in his name by the appropriate tax office. The provision of an exemption certificate in copy is sufficient, provided the exemption certificate has not been issued for the specific contract.