

# GENERAL TERMS AND CONDITIONS FOR PURCHASING FOR PLATH GMBH & Co. KG - STATUS April 2021

## Section 1 GENERAL

1.1 The contractual relationship between the Contractor and PLATH GmbH & Co. KG (hereinafter referred to as "PLATH") depends (also in this order) on the order of PLATH and the order confirmation of the Contractor, these General Terms and Conditions (hereinafter referred to as "GTC") and the applicable legal provisions, the latter, however, only to the extent that they are not permittedly and expressly changed or excluded in these GTC.

1.2 Individual agreements made on a case-by-case basis with the Contractor (including ancillary agreements, additions and amendments) shall in any case take precedence over these GTC. Subject to the evidence to the contrary, the content of such agreements shall be subject to a written contract or the written confirmation of PLATH.

1.3 These GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Contractor shall only become part of the contract to the extent that PLATH has expressly agreed to their validity in writing. This consent requirement shall apply in any case, for example, even if PLATH, in the knowledge of the General Terms and Conditions of the Contractor, shall accept Contractor's deliveries or services without reservation.

## Section 2 DEFINITIONS

**Contractor:** The Contractor is a seller of goods or services, regardless of whether the Contractor manufactures the goods or services himself or purchases them from suppliers. The Contractor is the contractual partner of PLATH.

**Deliverables:** Goods and/or services to be supplied by Contractor.

**Serious Defects:** A Serious Defect occurs in the following cases:

**Category 1 (1 - Blocker):** The defect prevents the execution of one or more essential specified functions. The defect poses a risk to people's lives or health.

**Category 2 (2 - Critical):** The defect severely impedes the execution of one or more essential specified functions. There is no workaround.

**Category 3 (3 - Major):** The defect seriously impedes the execution of one or more essential specified functions. But there is a workaround.

## Section 3 TERMS OF AND DELAY WITH DELIVERABLES

3.1 The Contractor shall provide the Deliverables with the agreed characteristics of the product (*Beschaffenheitsmerkmale*). In particular, as agreements on characteristics of the product are to be considered any specifications and descriptions of services, without it mattering whether these originate from PLATH or the Contractor. The Deliverables must also comply with the state of the art, the applicable legal provisions and the relevant regulations and guidelines of public authorities, and employer's liability insurance association (*Berufsgenossenschaft*) or trade associations (*Fachverbände*).

3.2 The Contractor is not entitled to have the

Deliverables performed by third parties (e.g. subcontractors) without the prior written consent of PLATH. The contractor bears the procurement risk for his Deliverables. PLATH is entitled to prohibit the Contractor from commissioning certain third parties to perform Deliverables for the military or secret services.

3.3 In the event of a noticeable delay in a deadline or a period, the Contractor shall be obliged to inform PLATH immediately in writing, giving reasons of the duration of the delay and of the remedies envisaged. PLATH's rights resulting from the delay remain unaffected.

3.4 Ownership to the respective Deliverable is transferred to PLATH with the respective acceptance at the respective place of performance (*Erfüllungsort*). The same applies to the risk of accidental loss and accidental deterioration of the Deliverable.

3.5 If the Deliverables have not been fully provided by the Contractor on the agreed date or within the agreed period, the Contractor has to pay to PLATH liquidated damages. The liquidated damages amount to 1% of the net price agreed according to the respective order for the part of the Deliverables in delay, for each full calendar week of delay, but in no event exceeding 5% of the agreed net price for all Deliverables under this order. PLATH reserves the right to prove that the damage has been larger; the Contractor reserves the right to prove that no or only a significantly lesser damage has occurred.

3.6 In addition, PLATH is also entitled to all claims and rights given by the applicable law because of the delay. In particular, PLATH is entitled to claim all direct or indirect damages caused by the delay. Plath may also withdraw from the contract with the Contractor, even without granting a period of grace.

## Section 4 ACCEPTANCE OF THE DELIVERABLES

4.1 If the Deliverables are subjected to one or more acceptance tests (e.g. FAT, SAT) and if they are not defect-free in the respective acceptance test, the respective acceptance test must be repeated in full after each attempt by the Contractor to rectify the defect.

However, if the Deliverables are affected only by a defect which is not a Serious Defect, the repeated acceptance test may be limited to the verification of the rectification of such defect, subject to the prior written consent of PLATH.

4.2 If PLATH refuses to accept the Deliverables in whole or in part due to defects, the Contractor must immediately submit a written report to PLATH explaining in detail the causes of the defects, the necessary corrective measures to remedy the defects and the associated delay.

4.3 The partial or complete take-over or use of a Deliverable does not constitute (an implied) acceptance without an express declaration of acceptance by PLATH.

4.4 All costs arising from defects in the Deliverables shall be borne by the Contractor.

## Section 5 WARRANTY

5.1 The statutory provisions shall apply to PLATH's rights in the event of a defect as to quality (*Sachmangel*) or a defect as to title (*Rechtsmangel*) in the Deliverables (including incorrect or incomplete Deliverables, as well as improper assembly, or defective assembly or operating instructions) and other breaches

of duty by the Customer, unless otherwise specified below.

5.2 The Contractor is in particular liable for the fact that the Deliverables have the agreed characteristics of the product (*Beschaffenheitsmerkmale*).

5.3 If the Deliverables have defects during the warranty period, i.e. in particular if the Deliverables do not have the agreed characteristics of the product (*Beschaffenheitsmerkmale*), the Contractor is obliged to supplementary performance (Supplementary Performance, *Nacherfüllung*). For this purpose, the Contractor - at PLATH's choice and free of charge - must either provide defect-free deliverables (Replacement Deliverables, *Ersatzleistung*) or rectify the defects (Rectification of Defects, *Nachbesserung*). The Supplementary Performance shall also include the disassemble of the defective Deliverables and the reinstallation, provided that the Deliverable according to its nature and purpose of use has been incorporated into another object or attached to another; PLATH's statutory right to reimbursement of thereto related expenses remains unaffected. The Contractor shall bear the expenses required for the purpose of verification and Supplementary Performance even if it is found that there was in fact no defect. PLATH's liability for damages in the event of an unjustified request for rectification of defects remains unaffected; in this respect, however, PLATH shall only be liable if PLATH has been actually recognized or has not been recognized through gross negligence that there was no defect. All this also applies to Software without limitations.

5.4 The warranty period shall begin with the hand-over of the Deliverable or, if the Deliverable is part of a contract for work (*Werkvertrag*) or if the acceptance of the Deliverable is contractually agreed, with the (last) acceptance (*Abnahme*). The general warranty period for claims for defects is 2 years. The 2-year warranty period also applies accordingly to claims arising from defects as to title, whereby the statutory limitation period for third parties' claims for return in rem (Section 438 (1) No. 1 German Civil Code, BGB) remains unaffected; Claims arising from defects as to title shall in no case be time-barred as long as the third party can still assert the right against PLATH, in particular in the absence of a statute of limitations. The warranty period shall be extended by the periods during which the Deliverables could not be used due to defects in the Deliverables.

5.5 PLATH is neither obliged to examine the Deliverables nor to make special enquiries about any defects at the time of conclusion of the contract. Partly derogating from Section 442 (1) p. 2 BGB, PLATH shall be entitled to claims for defects without restriction even if PLATH has remained unaware of the defect at the time of conclusion of the contract as a result of gross negligence.

5.6 The statutory provisions (Sections 377, 381 German Commercial Code, HGB) in relation to the commercial obligation to inspect and to give notice (*kaufmännische Untersuchungs- und Rügepflicht*) shall apply with the following proviso: Insofar as acceptance of the Deliverables has been contractually agreed, there is no obligation to inspect. If acceptance of the Deliverables has not been agreed, PLATH's obligation to inspect is limited to defects that are obvious during an incoming goods inspection (*Wareingangskontrolle*) or external inspection (*äußerliche Begutachtung*), including any delivery documents, (e.g. transport damage, incorrect and incomplete supply) or during the random check quality control of PLATH. Moreover, it is decisive to what extent an inspection is appropriate according to the

proper course of business, taking into account the circumstances of the case. The obligation to give notice with regard to defects discovered later remains unaffected. Without prejudice to an obligation to inspect, a complaint (notification of defect) shall in any case be deemed to be immediate and timely if it is sent within 2 weeks from the defect's discovery or, in the case of obvious defects, from the supply of the Deliverables.

5.7 In the event of a Serious Defect, in particular the Software, the Contractor shall carry out the Supplementary Performance chosen by PLATH without delay. If the Contractor has not started the Supplementary Performance measures required in this case within a reasonable period to be determined by PLATH in a promising manner, or if, in PLATH's view, the Contractor does not sufficiently vigorously carry out the Supplementary Performance measures, or if the Contractor otherwise fails to fulfil its obligation to Supplementary Performance within a reasonable period set by PLATH, PLATH shall be entitled to carry out the Supplementary Performance at the expense of the Contractor itself or to have it carried out by a third party (Substitute Performance, *Ersatzvornahme*) and to demand an advance of 130% of the estimated additional costs from the Contractor for the expenses required for this purpose.

5.8 The above also applies to deliverables used for the Replacement Deliverables (*Ersatzleistungen*) or for the Rectification of the Defects (*Nachbesserung*).

5.9 In the event of a defect as to quality (*Sachmangel*) or a defect as to title (*Rechtsmangel*), PLATH is entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, PLATH is entitled to compensation for damages and expenses in accordance with the statutory provisions. PLATH's statutory claims for recourse within a supply chain (*Lieferantenregress*) pursuant to Sections 445a, 445b BGB remain also unaffected. PLATH is in particular entitled to demand exactly the type of Supplementary Performance (Replacement or Rectification) from the Contractor, which PLATH owes its customer in the individual case. However, PLATH's statutory right to choose the type of Supplementary Performance (Section 439 (1) BGB) is not restricted.

## Section 6 EXPORT REGULATIONS

6.1 Where and to the extent that the Deliverables or part of the Deliverables are subject to the national, foreign or international trade and export control laws and regulations applicable at the place of business of PLATH or the Contractor, in particular those of the United States of Amerika (USA) or the European Union (EU) (hereinafter referred to as "Export Regulations"), these Export Regulations shall be fully complied.

6.2 Where and to the extent that the Deliverables or part of the Deliverables is subject of Export Regulations, the Contractor shall submit timely and free of charge, the necessary classification rules, official authorizations, licenses and other permissions (hereinafter jointly the "Permission") necessary for the export of the Deliverables or part of the Deliverables in accordance with the Export Regulations. The responsibility for obtaining the Permission shall be with the contracting party which is responsible according to the applicable Export Regulations.

6.3 In the event of a breach of the abovementioned obligations of the Contractor, the Contractor shall also take at Contractor's own expense the measures necessary as a result

of the breach in order to obtain from the competent authority a Permission for the supply or performance of PLATH to the (last) customer.

#### **Section 7 MAINTENANCE, REPAIR, MODIFICATIONS AND TECHNICAL ASSISTANCE**

7.1 The Contractor undertakes to PLATH to make, at PLATH's request, a binding offer concerning maintenance, repair and modification work with regard to the Deliverables provided by the Contractor.

7.2 The Contractor further undertakes to PLATH to make, at PLATH's request, a binding offer concerning technical assistance, in the context of which the Contractor sends its own personnel to guide and assist PLATH's personnel in the maintenance, repair and modification of the services provided by the Contractor.

#### **Section 8 INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, RIGHTS OF USE, SOFTWARE**

8.1 Intellectual property rights of third parties

8.1.1 The Contractor warrants to PLATH by means of an independent warranty guarantee pursuant to Section 311 BGB (*selbständiges Garantieverprechen*), that the Deliverables to be provided by the Contractor are free of any rights of third parties arising out of or in connection with know-how, patents, copyrights, trademarks, designs or other intellectual property rights (hereinafter referred to as "IPR"), also if and to the extent that the Deliverables of the Contractor are connected to or shared with deliverables of other persons or undertakings, unless PLATH has expressly agreed to such a third party right in writing.

8.1.2 The Contractor undertakes to indemnify and hold harmless PLATH from any claims asserted by third parties against PLATH as a result of the infringement of IPR or due to a competition or cartel infringement of the Contractor in connection with the IPR. This includes also reasonable legal defense costs of PLATH.

8.1.3 PLATH is entitled to terminate the contractual relationship with the Contractor by written notification, inter alia, if a third party asserts against PLATH or the (last) customer rights because of the infringement of IPR or if the Contractor has violated competition or cartel laws.

8.2 Usage rights and software

8.2.1 The Contractor grants PLATH a non-exclusive, free of charge, irrevocable, timely and locally unlimited, as well as transferable right of use in respect of the Deliverables to be provided by the Contractor, in particular with regard to any and all computer programs (herein referred to as "Software"). PLATH is entitled in particular to integrate all or part of the Deliverables of the Contractor, in particular the Software, into other products, to distribute the Deliverables (whether or not integrated in other products) worldwide and, to the extent necessary to achieve the sales activities pursued by PLATH, to process or otherwise redesign or rework them and to distribute the results thereof as laid out before.

8.2.2 If and to the extent that PLATH uses the Deliverables of the Contractors (irrespective in which way) to fulfil its own performance obligations towards a (direct or indirect) customer, the right of use for PLATH – but not for the (direct or indirect) customers of PLATH – is limited to the purposes of fulfilling these

performance obligations.

8.2.3 Notwithstanding any other provision of the contractual relations between PLATH and the Contractor, the rights of use in accordance with this Section 8.2 shall, in particular with regard to Software, also include:

a) The right to exercise or let exercise any rights arising out of or in connection with the IPR in the Software, in any way whatsoever, and to improve the use of the Software for any purposes permitted in the present or in the future, in particular defence purposes, provided that this is done in the ordinary business of PLATH.

b) Loading, displaying, running, transmitting and storing the Software or any customized version thereof, in particular with regard to maintenance, error correction, virus control, introduction of potential improvements, transmission to other devices, interfacing and/or dialoging the Software with other software or other devices.

c) The changes in parameters and the introduction, modification and removal of security measures.

d) The making, storage and modification of copies by PLATH or third parties for backup purposes, (further) development and testing of the Software. In the case of backup copies, the copyright information should not be removed.

8.3 PLATH is hereby entitled by the Contractor to transfer the use in whole or in part to third parties in accordance with Section 8.2, if and to the extent that this is appropriate, so that the Deliverables can be fully utilized for (i) the purposes, in particular the defense purposes, and (ii) for the exercise of the rights of the (last) customer or end customer. The rights of use in accordance with Section 8.2 are not tied to special devices or special locations.

#### **Section 9 CONFIDENTIALITY**

9.1 Notwithstanding any other provision of the contractual relations between PLATH and the Contractor, the Contractor is obliged to treat all information about the Deliverables strictly confidential. Against this background, the Contractor undertakes to keep strictly confidential any and all documents, drawings, procedures, technical knowledge and experience as well as other information and facts (hereinafter jointly "Confidential Information") which become known to the Contractor in connection with the order and performance of the Deliverables and to use the Confidential Information exclusively for the purpose of fulfilling Contractor's obligations to provide the Deliverables.

9.2 The Contractor shall oblige Contractor's legal representatives, as well as vicarious and other agents to maintain appropriate confidentiality within the limits of what is legally permissible, even for the period after such person has left the Contractor. The Contractor shall ensure and bring about that the undertakings and persons consulted by Contractor to fulfil Contractor's performance obligations are obliged to keep confidentiality accordingly.

#### **Section 10 LIABILITY OF THE CONTRACTOR**

10.1 The Contractor shall be liable to PLATH in accordance with the applicable statutory provisions.

10.2 The Contractor is obliged to indemnify and hold PLATH harmless from all claims and rights of third parties

asserted against PLATH for an act or omission of the Contractor, its legal representatives, vicarious and other agents and subcontractors.

10.3 If the Contractor is responsible for a product damage, Contractor must indemnify and hold PLATH harmless from all claims and rights of third parties to the extent that the cause is set in Contractor's sphere of domination and organization.

10.4 As part of its indemnification and hold harmless obligations, the Contractor shall reimburse PLATH in accordance with Sections 683, 670 BGB all expenses arising out of or in connection with claims asserted by third parties, including product recall measures carried out by PLATH. PLATH will inform the Seller of the content and scope of product recall measures, to the extent possible and reasonable.

10.5 Further and other claims of PLATH remain unaffected.

#### **Section 11 FINAL PROVISIONS**

11.1 Changes and amendments to an order or a contract concluded between the Contractor and PLATH must be made in writing.

11.2 This GTC shall be subject to the laws of the Federal Republic of Germany to the exclusion of the UN-Convention on Contracts for the International Sale of Goods (CISG).

11.3 The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship between the Contractor and PLATH is Hamburg, Federal Republic of Germany. PLATH is, however, entitled in any case to bring an action at the place of performance (*Erfüllungsort*) of the obligation to perform or at the general place of jurisdiction (*allgemeiner Gerichtsstand*) of the Contractor. Mandatory legal regulations, in particular on exclusive jurisdiction, remain unaffected.