

This version of the General Terms and Conditions of Purchase shall be effective from 01 April 2015.

General Terms and Conditions of Purchase

§ 1 Scope

(1) All offers submitted by Suppliers and all purchase orders by Fresenius Digital Technology GmbH for supplies and services to be provided by our Suppliers shall be exclusively governed by these General Terms and Conditions of Purchase. The General Terms and Conditions of Purchase shall be an integral part of all contracts entered into between Fresenius Digital Technology GmbH (hereinafter referred to as Purchaser) and its Suppliers for the supplies or services offered by them. They shall also apply to all future supplies and services provided or offers submitted to Purchaser, irrespective of whether or not they have been explicitly agreed.

(2) These General Terms and Conditions of Purchase shall apply exclusively. Any deviating, conflicting or additional general terms and conditions of Supplier shall only become a part of the contract if and to the extent they have been expressly approved by us in writing. This requirement for approval shall apply without exception, even if we accept Supplier's deliveries without reservations in the knowledge of Supplier's general terms and conditions or refer to a document containing or referencing to such general terms and conditions of Supplier.

(3) Any separate agreements made with Supplier in the individual case (including side agreements, additions and amendments) shall have precedence over these General Terms and Conditions of Purchase. A written contract or our written confirmation shall be decisive for the content of such separate agreements.

§ 2 Orders, Order Acknowledgement and Contract

(1) Purchaser's order for an offer submitted by Supplier shall constitute a binding contract between Purchaser and Supplier. Purchase orders shall only be effective if made in writing. In the same way, purchase orders placed in advance verbally or by telephone including any side agreements or subsequent modifications shall only be binding if and to the extent they have been confirmed by Purchaser in writing. The provisions under § 9, section (1) shall apply to services within the meaning of §§ 611 et. seq. German Civil Code (BGB).

(2) Purchaser shall not be bound by any deviating or additional terms included in Supplier's order acknowledgement. § 1 section (3) shall apply mutatis mutandis.

§ 3 Prices

(1) The price stated in the purchase order shall be firm and binding. Unless otherwise agreed, all prices stated in the purchase order are understood to be in EURO exclusive of statutory value added tax.

(2) The price stated in the purchase order is understood to include any withholding taxes due. If withholding taxes are due and Supplier cannot produce an exemption certificate for such withholding taxes, the Purchaser is required by law to deduct withholding tax from the payments due to Supplier. We will assist Supplier in applying for an exemption certificate or

the reimbursement of withholding taxes if Supplier provides us with all the requisite information and documents for this purpose. Our assistance is, however, no advisory service and cannot replace the consultation of a tax counsel, if required. In order to ensure proper withholding tax collection, Supplier undertakes to notify Purchaser promptly of all relevant changes in Supplier's status (e.g. change of domicile, setting-up of a permanent establishment).

(3) In the absence of a written agreement to the contrary, the price shall be understood inclusive of shipment and transport to the shipping address indicated in the purchase order, and inclusive of packaging.

(4) If the agreed price does not include packaging and the price of the packaging - provided not only on a loan basis - has not been expressly fixed, packaging shall be billed at verifiable cost.

(5) Purchaser shall not be obligated to return the packaging unless specifically agreed. At Purchaser's request, packaging shall be taken back by Supplier at Supplier's expense.

(6) Times travelled and travel and accommodation expenses will be compensated or reimbursed only if expressly stated in the purchase order and if the respective trip and associated costs have been expressly approved by us.

§ 4 Terms of Payment

(1) The agreed price shall be payable within 30 calendar days from complete delivery of the goods and services (including acceptance, if agreed) and receipt of a properly prepared invoice. Timeliness of the payments owed by us shall be determined by reference to the date our transfer order is received by our bank.

(2) For downpayments to be made by us, Supplier shall furnish at Purchaser's request a performance bond issued by a German commercial bank. The performance bond shall remain in place and in full force and effect until complete performance of Supplier's supply or service obligations.

(3) In the absence of any clear order of redemption for a payment, Supplier undertakes to contact us with regard to the order of redemption and to set off the payment against outstanding amounts according to such order of redemption. Supplier shall not be entitled to first set off Purchaser's payments against any previous debts or costs and interest.

§ 5 Delivery Date and Delivery, Transfer of Risk

(1) Delivery dates agreed shall be binding.

(2) Supplier undertakes to promptly notify Purchaser in writing of any circumstances or foreseeable circumstances that prevent Purchaser from meeting the delivery date. Each postponement of binding delivery dates shall be subject to written agreement.

(3) If the latest date by which delivery is due can be derived from the contract, Supplier shall be deemed to be in default on expiry of this date without any default notice on our part being required.

(4) In the case of delayed delivery Purchaser may exercise - without any restrictions - all rights and remedies available to it at law, including its right of rescission and indemnification in lieu of performance after having given notice of default to Supplier and expiry of a reasonable cure period. Moreover, Purchaser shall be entitled to claim a penalty in the amount of 0.2 % of the total net purchase order value for each work day of delayed delivery, however not more than 5 % of the total net purchase order value. Such penalty shall be payable for each binding delivery date not met by Supplier. The penalty shall be set off against delay damages payable by Supplier.

(5) Supplier shall not be entitled to make part deliveries without our express prior consent.

(6) Even if shipment has been agreed, the risk shall not transfer to us until after the goods have been handed over to us at the agreed point of destination and/or have been accepted by us.

§ 6 Reservation of Title

(1) Purchaser reserves title and copyrights in all illustrations, plans, drawings, calculations, specifications for execution, product descriptions and other documents (hereinafter collectively called "Documents") made available to Supplier. Such Documents shall be used exclusively in performance of the contract and shall be returned to us upon our request, however not later than on completion of the contract. Any copies made of such Documents by Supplier shall be destroyed. Exempted therefrom are copies that have to be retained by Supplier under its legal retention duties and the storage of data for backup purposes as part of the normal data backup procedure. The Documents shall be held in confidence and not be disclosed to third parties. The foregoing obligation shall survive the contract. The obligation shall only expire if and to the extent the knowhow contained in the Documents made available has entered the public domain without infringement of a confidentiality obligation.

(2) The above provision shall apply mutatis mutandis to materials and products (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects made available by us to Supplier for production purposes. As long as such objects have not been processed they shall be identified as Purchaser's property, stored separately and reasonably protected against loss and damage on Supplier's costs.

(3) Any reservations of title by Supplier shall only be applicable if and to the extent they relate to our payment obligation for the respective products in which Supplier reserves title. In particular, expanded or extended reservations of title shall not be allowed.

§ 7 Warranty Claims

(1) Supplier shall be liable for defects, lack of warranted characteristics and non-compliance with guarantees given according to statutory law unless otherwise provided for by the subsequent provisions.

(2) The warranty period shall be 24 months from the date of risk transfer unless a longer period is provided for by mandatory statutory provisions.

(3) Purchaser shall be under no obligation to reserve its warranty rights at the time of acceptance of the goods or services. Unless an acceptance or receiving inspection has been agreed, a notice of defects shall be deemed to have been given in due time if it was delivered within 10 work days after receipt of the goods or, in the case of hidden defects, within 10 work days after their discovery.

(4) Should the products supplied be sold on to third parties by Purchaser, Supplier shall indemnify Purchaser inter-partes from any producer liability claims (*Produzentenhaftung*) by third parties if and to the extent the fault triggering liability is attributable to Supplier.

(5) Supplier warrants that software and data carriers provided are free from malicious functions (so-called malware), computer viruses or worms, Trojan horses or similar. Prior to making software and data carriers available to us, Supplier shall check such software and data carriers using a current state-of-the-art virus search program.

(6) Supplier shall inform us about open source software used in software provided to us and hold us harmless from and against any third-party claims asserted against us on account of the use of such open source software, and reimburse to us all expenses incurred (including reasonable legal fees) in connection with such use unless such claims are exclusively attributable to a breach of duties on our part.

§ 8 Intellectual Property Rights

(1) Pursuant to the provisions of section (2) below, Supplier warrants that the products or services provided by him do not infringe any third-party intellectual property rights.

(2) Supplier shall indemnify and hold us harmless from and against any and all third-party claims arising out of or in connection with an infringement of intellectual property rights pursuant to section (1) and to reimburse all expenses (including reasonable legal fees) incurred by us in connection with such claims. Purchaser's right to indemnification shall exist regardless of whether or not the infringement has occurred through Supplier's fault, unless such infringement is solely attributable to Purchaser.

(3) Any further rights and remedies with regard to deficiencies in title of the products supplied to us shall remain unaffected thereby.

§ 9 Additional Terms and Conditions for Services

(1) Any prediction or statement on a total number of manhours provided in purchase orders for services - in particular consultancy services - or other documents or records are non-binding estimates derived to the best of our knowledge and belief from an evaluation of the expected scope of services required. Such predictions shall not entitle Supplier to demand Purchaser's full use of the number of manhours so projected nor to the payment of any services not made use of. Such prediction obligates Supplier to provide the contractual services as called off by Purchaser at the terms and conditions of the purchase order.

(2) The services actually provided by Supplier shall be billed at hourly or daily rates on the basis of manhours or man days actually expended. Supplier shall invoice the services to be compensated monthly or after completion of the contract based on time sheets countersigned by us. Suitable proof of the services provided shall be attached to the invoice.

(3) Purchaser undertakes to reasonably support Supplier in the performance of the contract. In particular, Purchaser shall establish at its premises and at its expense the prerequisites necessary for the proper provision of the services.

(4) Purchaser shall have the right to terminate contracts for services at any time, observing a notice period of 10 work days. The decision on a termination shall exclusively rest with Purchaser. Both parties' right of termination for cause shall remain unaffected thereby.

(5) Supplier shall not be entitled to engage sub-contractors with the provision of services without Purchaser's express prior consent. The same shall apply to the provision of work under contracts for work and services.

§ 10 Acceptance

(1) For contracts for the performance of work results (*Werkvertrag* in accordance with §§ 631 et seq. BGB (German Civil Code)), acceptance of the work results shall be the prerequisite for payment of the compensation. Partial acceptance shall only be allowed if agreed in writing. Partial acceptance shall not prejudice our right to assert defects in the course of the overall acceptance, in particular if such defects only become apparent through the interaction of the individual parts of the work results. Services, in particular consultancy and support services, are not amenable to acceptance unless the need for acceptance of the service has been expressly agreed in the contract.

(2) After completion, Supplier will give notice to Purchaser that the respective work result is ready for acceptance and hand over the work results including the associated documentation to Purchaser. Purchaser shall then have 15 days to commence acceptance testing.

(3) After successful acceptance testing, Purchaser shall promptly declare acceptance in writing. Should the acceptance test fail Purchaser shall submit to Supplier a list of all defects precluding acceptance. Supplier shall promptly remedy all defects precluding acceptance and resubmit the work results for acceptance.

(4) Minor defects shall not preclude the acceptance of the work results but shall be remedied as part of the warranty claims. Purchaser will document minor defects in the written acceptance declaration or communicate them to Supplier by other means.

(5) If acceptance is ruled out by the nature of the work or service, the delivery of the work or service shall be deemed to constitute its acceptance.

§ 11 Insurance

At Purchaser's request, Supplier shall furnish proof of maintaining adequate employer's third-party liability and pecuniary damage liability insurance.

§ 12 Secrecy and Data Privacy

(1) Supplier undertakes not to disclose to third parties without Purchaser's prior written consent its business relationship with Purchaser and any business secrets and other confidential technical and business information coming to its knowledge as a result of the contract. This applies in particular to publications for public relations or advertising purposes, irrespective of the medium used. Supplier undertakes to inform its employees of this duty. A culpable breach of this duty by an employee of Supplier shall constitute a breach of Supplier's contractual obligations under this contract.

(2) To the extent Supplier and/or its employees process or use personal data held by Purchaser in performing the contract, the parties will sign a written agreement in accordance with § 11 of the German Federal Data Protection Act (BDSG) prior to commencement of service provision. Moreover, Supplier shall adhere to the applicable privacy and data protection regulations and commit its employees to maintain data privacy pursuant to § 5 BDSG.

(3) Supplier shall put its subcontractors under a data privacy obligation as provided for under this § 12.

§ 13 Assignment

Purchaser will only consent to Supplier's assignment of claims against Purchaser if the new creditor relieves Purchaser from any claims in the case of an erroneous payment to the previous creditor.

§ 14 Export and Customs Regulations

Supplier undertakes to inform us by way of its business documents – as a minimum requirement, however, in its order acknowledgement, delivery documents and invoice - of any approvals required for the (re)export of its products and/or services under the applicable export and customs regulations, in particular those of Germany, the European Union and the USA, as well as of the export and customs regulations of the country of origin of its products and services. In this connection, Supplier shall indicate as a minimum the export list number and/or the export classification number as well as any other information requested by Purchaser.

§ 15 General Provisions

(1) If Supplier is a merchant (*Kaufmann*) within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, Bad Homburg v.d. H. shall be the exclusive place of jurisdiction for all disputes arising either directly or indirectly out of and in connection with the contractual relationship.

(2) This above jurisdiction clause shall also apply to Suppliers pursuing a comparable commercial activity abroad and foreign institutions comparable with domestic legal entities under public law or a domestic special fund under public law.

(3) These General Terms and Conditions of Purchase and all legal transactions between Purchaser and Supplier shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(4) The official and binding version of these General Terms and Conditions of Purchase is in English language. If there should be any discrepancy between an English language word or series of words and a German language word or series of words (set in italics) used to clarify the English language word or series of words, then, to the extent of such discrepancy only, the meaning of the German language word or series of words shall prevail.