

# General Terms and Conditions

## ml&s Suisse SA

### Article I: General provisions

1. These terms and conditions apply exclusively to all legal relations between the supplier and the purchaser within the scope of the deliveries and/or services of the suppliers (hereinafter referred to as: the deliveries). The terms and conditions of the purchaser apply only if the supplier has approved them expressly in writing. If framework agreements have been concluded between the parties or bids have been submitted, these shall take precedence. They shall be supplemented by these terms and conditions provided no further special provisions have been made. Changes to the contract, supplements or verbal collateral agreements shall apply only if they have been confirmed in writing by the supplier. The statements that have been mutually agreed in writing shall be decisive for the scope of the deliveries.
2. The supplier shall fully retain its ownership rights, copyrights and rights as regards cost estimates, drawings and other documents (hereinafter referred to as: the documents). The documents may only be made accessible to third parties with the supplier's prior consent and must be returned immediately upon request if the order has not been placed with the supplier. Items 1 and 2 apply accordingly to documents of the purchaser; these may however be made accessible to third parties that have legitimately received deliveries from the supplier.
3. The purchaser has the non-exclusive right to use the standard software and firmware with the agreed performance characteristics, in their unchanged form and for the devices approved. The purchaser may make a backup copy of the standard software without express agreement.
4. Partial deliveries are allowed provided they are deemed reasonable by the purchaser.
5. The term "claims for damages" in these terms and conditions also includes claims for compensation for expenses incurred in vain.

## **Article II: Prices, terms of payment and offsetting**

1. The prices are Ex-Works exclusive of packaging plus applicable statutory value added tax.
2. Payment shall be made free of charge to the supplier.
3. The purchaser may set off payments only against claims that are uncontested or legally binding.
4. If the purchaser fails to comply with the agreed payment dates, it shall be liable, without notice, to pay interest from the time of the agreed due, at the rate usually applicable at the supplier's business address, but no less than 4% over the current 3-month CHF-LIBOR rate. The right to claim further damages is reserved. Furthermore, the supplier can refuse the service incumbent upon it if, after conclusion of the contract, it becomes apparent that its claim for a counter-performance is jeopardized as a result from the other party's deficient capability. The right to refuse performance shall lapse if the counter-performance has been provided or sufficient security has been made for it.

## **Article III: Retention of title and payment protection**

1. The items of delivery (reserved goods) remain the property of the supplier until all claims due by the purchaser arising from the business relationship have been fulfilled, provided such retention of title is valid under the respective law. If the value of all security rights to which the supplier is entitled, exceeds the value of all claims secured by more than 20 %, the supplier will release a corresponding portion of the security rights at the request of the purchaser; the supplier shall have the right to choose between various security rights.
2. For the duration of the retention of title, the purchaser is prohibited from pledging the reserved goods or from using them as security, and the resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its payment obligation.
3. In the event of pledging, confiscations or other interventions by third parties, the purchaser should immediately notify the supplier in writing.

4. Should the purchaser breach its duties, in particular by failing to pay by the agreed date, the supplier shall be entitled to withdraw from the contract as well as take back the goods if the purchaser has failed to remedy the breach within a reasonably set time-period. The purchaser is obligated to return the goods.

The withdrawal or assertion of the retention of title or the pledging of the reserved goods by the supplier does not constitute withdrawal from the contract, unless the supplier has expressly stated it.

#### Article IV: Deadlines for deliveries; delay

1. Compliance with the delivery deadlines shall require the timely receipt of all documents to be provided by the purchaser, including approvals and permits required, in particular plans, as well as compliance with the agreed terms of payment and other obligations by the purchaser. If these conditions are not met in due time, deadlines will then be extended correspondingly; this shall not apply if the supplier is responsible for the delay.

The standard procurement times for parts mentioned in the bid are the reference values provided by our suppliers. Binding delivery times are provided upon receipt of order confirmation.

2. If the failure to comply with the deadlines is due to :

- a) force majeure, e.g. mobilisation, war, terrorism, or other similar events (e.g. strike, lock-out),
- b) viruses and other attacks by third parties on the IT system of the supplier, provided these occurred despite compliance with the ordinary care safety measures,
- c) obstacles arising from German, Swiss, US or other applicable national, EU or international foreign trade regulations or due to other circumstances for which the supplier is not responsible,
- d) delayed or incorrect delivery of the supplier,

the deadlines shall be suitably extended.

3. If the supplier is behind schedule and provided the purchaser can prove it has suffered damages as a result, the purchaser may assert claims for compensation for each completed week in the amount of 0.5 %, but no more than 5 % in total of the price.

for that part of the deliveries that could not be used as intended as a result from the delay.

4. Both claims for damages of the purchaser for delayed delivery and claims for damages in lieu of performance, which exceed the limits stipulated in Item 3, shall be excluded in all instances of delayed delivery, including after expiry of any delivery deadline that may have been set by the supplier. This does not apply for unlawful intent or gross negligence on the part of the supplier and where they contradict mandatory law. The purchaser can withdraw from the contract only if the supplier is to blame for the delayed delivery.

5. At the request of the supplier, the purchaser is required to declare within a reasonable period of time whether it is withdrawing from the contract as a result from delayed delivery or if it insists on the delivery being made.

6. If the dispatch or shipment is delayed at the request of the purchaser by more than one month after the notice of readiness for dispatch, the purchaser may charge a storage fee for each additional month started in the amount of 0.5 % of the price of the items of delivery. The contractual parties reserve the right to provide proof of higher or lower storage fees.

#### **Article V: Transfer of risk**

1. The risk also transfers to the purchaser for carriage paid delivery as soon as shipment has been made. At the purchaser's request and cost, the delivery is ensured by the supplier against usual transport risks.

2. If the dispatch, shipment, start, takeover in one's own facility or in a testing facility is delayed by the purchaser for reasons it is responsible for or if the purchaser is late in accepting the delivery for any other reasons, the risk is transferred to the purchaser.

#### **Article VI: Acceptance**

The purchaser may not refuse deliveries for insignificant defects.

## Article VII: Material defects

1. The warranty period shall be 12 months. It begins at the time of dispatch of the delivery ex works or with the eventually agreed acceptance of the delivery. If the shipment or acceptance is delayed for reasons the supplier is responsible for, the warranty period ends at the latest 18 months after notification of readiness for dispatch. The warranty expires prematurely if the purchaser or third party makes inappropriate modifications or repairs or if the purchaser, in case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the opportunity to fix the defect.
2. Upon written request from the purchaser, the supplier is required to repair or replace, at its discretion, as quickly as possible, all parts of the delivery of the supplier, which have demonstrably become damaged or unusable as a result from bad materials, faulty design or poor workmanship until the end of the warranty. Replaced parts are the property of the supplier, unless it has expressly waived that right. The supplier shall bear the costs incurred in the performance of the repair work in its facility. If the repair work cannot be carried out at the facility of the supplier, the purchaser shall bear the costs associated with it if they exceed the customary costs incurred for transport, personnel, travel, accommodation, as well as the costs of dismantling and reassembling the defective parts.
3. Excluded from the supplier's warranty and liability for defects are all deficiencies, which cannot be shown to be the result of bad materials, faulty design or poor workmanship, e.g. due to natural wear and tear, inadequate maintenance, disregard of operating regulations, excessive operation, unsuitable operating means, chemical or electrolytic impacts, construction or assembly work not carried out by the supplier, as well as other reasons that cannot be attributed to the supplier.
4. The supplier shall assume the warranty responsibility for deliveries from sub-suppliers that are prescribed by the purchaser, only in the context of the warranty obligations of the respective sub-suppliers.
5. As regards defects in material, design or implementation, the purchaser does not have any rights or claims except for those mentioned in Items 1 to 4 above.
6. The actual quantities delivered can deviate by +/- 5% (at least 1) from the quantity ordered and do not entitle the purchaser to a right to complain.

## **Article VIII: Industrial property rights and copyrights; defects of title**

1. Unless otherwise agreed, the supplier is required to provide a delivery free of industrial property rights and copyrights of third parties (hereinafter referred to as: the property rights) only in the country of the place of delivery. If a third party asserts a justified claim against the supplier for infringement of industrial property rights, as regards the deliveries used as per the contract, the supplier shall be held liable to the purchaser within the deadline stated in Art. VIII No. 1 as follows:

a) The supplier shall, at its own expense and discretion, either obtain a right of use for the deliveries concerned to modify them so that the property right is not infringed or replace them. If the supplier is not able to do so under reasonable conditions, the purchaser shall be entitled to the statutory rights of withdrawal or reduction.

b) The supplier's obligation to pay damages is governed by Art. XII.

c) The aforementioned obligations of the supplier shall only apply if the purchaser contacts the supplier immediately and in writing about the claims asserted by third parties does not admit infringement and reserves all defensive actions and settlement negotiations to the supplier. If the purchaser suspends the use of the delivery for reasons of mitigation or for other important reasons, it is required to inform the third party that the suspension of use does not imply an acknowledgement of infringement of property rights.

2. Claims by the purchaser shall be excluded if it is responsible for the infringement of the right property.

3. Claims by the purchaser shall be excluded if the infringement of the right property results from a specific requirement by the purchaser, an application not envisaged by the supplier, a change in the delivery by the purchaser or used in connection with products that have not been delivered by the supplier.

4. In the event of infringement of property rights, the claims of the purchaser stipulated in Item 1. A) shall otherwise be governed accordingly by the provisions of Art. VIII.

5. In the event of other defects of title, the provisions of Art. VIII shall apply accordingly.

6. Broader claims or claims other than the claims regulated in this Art. IX made by the purchaser against the supplier and its vicarious agents for defect of title are excluded.

7. As the system manager, the customer is responsible for the assessment of the system in accordance with patent law and releases ml&s Suisse SA from legal claims by third parties.

## Article IX: Conditional fulfilment

1. The fulfilment of the contract is subject to the absence of obstacles arising from German, Swiss, US or other applicable national, EU or international trade regulations or due to embargos or other sanctions.
2. The purchaser is required to provide all information and documents required for export, movement and import.

## Article X: Impossibility, contractual adjustment

1. If the delivery is not possible, the purchaser is entitled to claim damages, unless the supplier is not responsible for the impossibility. Any claim for damages of the purchaser shall however be limited to 10 % of the value of the respective part of the delivery that could not be used as intended as a result from the impossibility. This limitation shall not apply in case of unlawful intent or gross negligence of the supplier; it does apply however in case of unlawful intent or gross negligence of its support personnel.
2. If events within the meaning of Art. IV No. 2 a) to c) substantially change the economic significance or content of the delivery or significantly impact the supplier's operation, the contract shall be adapted in good faith. Where this is not economically justifiable, the supplier has the right to withdraw from the contract. The same applies if the necessary export licences have not been received or cannot be used. If the supplier wishes to make use of the right of withdrawal, it must immediately notify the purchaser after becoming aware of the consequences of the event, even if an extension of the delivery period was initially agreed with the purchaser.
3. The supplier is entitled to a reasonable price adjustment in the following cases:
  - a) If the price of a single cost component changes (for example a primary product or several), the supplier reserves the right to adjust the price for the end product, provided the price change for the cost component in question has a proportional impact on the price of the end product.
  - b) The same applies for rate-related price changes.
4. The delivery capability depends on the availability of the primary materials. The information for the delivery time is therefore subjected to the availability of supplies and raw materials and based on standard delivery times for the primary materials.
5. The price calculations are based on the binding purchase quantities and times as defined in the bid. The material surplus specific to the components are not included in these price calculations. Unless otherwise agreed, the quantities agreed shall become due for delivery no later than 24 months from the initial order of the framework contract (purchase quantities incl. material surplus specific to the project).

6. In the event of partial deliveries for which the supplier is not responsible, small-volume surcharges will be applied.

7. The material provided must be delivered customs-paid and franco domicile with 3% transmission in good time before the start of production. During the incoming goods inspection, only quantities and types will be checked, together with transport damages visible externally or defects identifiable externally. For all damages that can be attributed to goods defects, the purchaser is liable without restriction.

#### Article XI: Other liability

All breaches of contract and their legal consequences as well as all claims by the purchaser, regardless of the legal grounds they are asserted upon, are definitely governed by these terms. In particular, all claims for damages, abatement, cancellation of the contract or withdrawal from the contract that are not expressly named are excluded. In no case can the purchaser assert claims for compensation for damages which have not been caused to a delivered item itself, such as, specifically, loss of production, loss of use, loss of orders, loss of profit and any other indirect or direct damages.

This exclusion of liability shall not apply to unlawful intent or gross negligence of the supplier; it does apply however in case of unlawful intent or gross negligence of its support personnel. Furthermore, this exclusion of liability shall not apply where it is contrary to mandatory law.

## Article XII: Place of jurisdiction and applicable law

1. Disputes, disagreements or claims arising out of or in connection with this contract, including its validity, invalidity, breach or termination, shall be settled by mediation in accordance with the International Rules of Arbitration of the Swiss Chambers' Arbitration Institution / International Chambers of Commerce (ICC). The Rules of Arbitration shall apply in the version in force at the time of notification of mediation. The arbitration tribunal should consist of one to three arbitrators. The place of arbitration is Delémont, Jura, Switzerland unless the parties have agreed on another venue. The language used for the arbitration proceedings is French.
2. Contrary to the provisions stated in Item 1 above, the plaintiff is also entitled to bring an action before the relevant national court, for a value in dispute below CHF 1 million.
3. This contract, including its interpretation, is subject to Swiss material law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## Article XIII: Confidentiality and obligation of the contract

1. The purchaser is required to treat the conclusion of the contract confidentially.

All commercial and technical details as well as business transactions that have been disclosed as part of the business relationship with the supplier, shall be treated as trade secrets unless they were already in the public domain. The confidentiality obligation, which remains in force after the contract has expired, shall be imposed by the supplier on its employees, sub-suppliers or other agents in a contractually similar form. If a confidentiality agreement has been concluded between the parties, it shall take precedence.

2. Should individual provisions of the contract be invalid, the remaining parts of contract shall remain binding. This does not apply if adherence to the contract constitutes unreasonable hardship for either party.