

# Terms and Conditions of Purchase of Afag

## 1 General

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- 1.1 Orders and purchases shall be issued solely in accordance with our Terms and Conditions of Purchase, to the extent that our orders do not explicitly state any other terms or conditions in writing. In the context of a current or recurring business relationship amongst business representatives, the present terms and conditions of purchase will become part of the contract, even if Afag does not explicitly refer to their inclusion. At no time will other sales and delivery terms of the supplier become part of the contract. This pertains even when these are not explicitly objected to or when the delivery is unconditionally accepted. These Terms and Conditions are valid for:
- Afag Automation AG, CH-Zell
  - Afag GmbH, D-Amberg
  - Afag Engineering GmbH, D-Hardt
  - Afag Americas Inc., USA-Nashville
  - Afag Shanghai Ltd., Shanghai City, China.

## 2 Description of Performance

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- 2.1 The supplier shall manufacture the product ordered and/or perform the service ordered in conformity with the relevant technical documentation and/or other sundry documents.
- 2.2 Contractually agreed performance must be carried out in accordance with the applicable recognised codes of practice and must conform to the specific DIN, VDE, VDI or comparable standards. The principles, standards and legal provisions in the Purchaser's country and those at the specified place of delivery or the place of final destination will prevail.
- 2.3 The statutory provisions for machines, technical equipment, accident prevention, workplace safety, environmental safety etc. must be complied with.
- 2.4 The supplier is obliged to maintain a recognised quality management system for those performances carried out in accordance with this contract.
- 2.5 The supplier bears full responsibility for the production of tools, devices and other equipment to the extent that these are required for manufacturing the product, even when the supplier assigns third parties to produce these.
- 2.6 Should the order contain developments, constructions, designs or similar work, the supplier will be obligated to surrender all resulting issues, in particular construction and assembly drawings as well as documentation, user manuals, etc. in both electronic and paper forms, at latest upon delivery or at a time mutually agreed upon in writing. We will receive sole possession of and exploitation rights to the developments, constructions, designs and similar work.
- 2.7 Software will be delivered on the data storage media customarily used in the trade in a machine-readable object code form together with the application documentation. The development of software includes, to the extent agreed upon, in addition to the scope of services, the delivery of software on data storage media customarily used in the trade in a machine-readable source code form and the documentation of the programme development in electronic form and paper form as well as manufacturer's documentation. This applies also to subsequent alterations and/or updates. The source code will be delivered in writing in the programming language with detailed explanatory comments. The comments will be written in the specified language of the country. Technical terminology as specified by us or by the customer must be used. Source and object codes and documentation will be provided at the time of delivery and will be commensurate with the state of the art current at the time of delivery. To the extent that software is subsequently customised or updated, the source and object codes and documentation together with referencing of the amendments must be provided unrequested. The purchaser may at any time request the relevant current source and object codes. We retain sole ownership of and exploitation rights to software developed specifically for us.

### 3 Purchase Orders

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- 3.1 Purchase Orders and other statements are only binding when they are issued or confirmed by us in writing or electronically.
- 3.2 In the event that our Purchase Orders are not confirmed within eight days of submission giving a firm delivery date, we reserve the right to cancel the Purchase Order without any obligations.
- 3.3 Tenders and quotations shall be binding and free of charge.
- 3.4 Unless otherwise agreed in writing, the supplier will be liable for the costs and risks of delivery. The assumption of risk is transferred upon acceptance of goods at the place of delivery. Delivery has to be arranged to the stipulated place of delivery.
- 3.5 Every delivery must include a delivery note and a list of contents for each package and must be identified by our order number and order item. The delivery note and the package contents list must show quantities and must clearly specify the parts being delivered. The description used to specify the parts on the list must also be identifiable on the parts delivered. If a package contains only identical parts, the description given on the package contents list will suffice. If the delivered parts have been made to order using a drawing, a signed measurement protocol must be included with the delivery.
- 3.6 If the delivery notes or package contents list is missing, we reserve the right to reject the delivery if it is our belief that acceptance of it would not be appropriate. If deliveries rejected by us or faulty goods are returned, the supplier will bear the costs and risks of return transport. The value of return delivery will be charged to the supplier. We may not thereby be considered in default of acceptance.
- 3.7 Deliveries going directly to our customers must include a neutral delivery note stating the Afag company order number and must clearly state that the delivery is made on behalf of Afag. The delivery carrier must provide us with a signed dispatch notice for our accounting control purposes. In this event, the measurement report must be sent directly to Afag.
- 3.8 Notwithstanding number 2 (4), for service contracts the transfer of risk occurs only after acceptance.
- 3.9 If materials needed by the supplier to carry out installation and assembly services are delivered to or provided by us, then the supplier's services must include unloading the transported goods and transporting these from the storage location to the place of assembly.

### 4 Force majeure

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- 4.1 Industrial disputes, government interventions, operational breakdowns, disruptions to the supply of materials or power or any other unforeseeable, exceptional and unavoidable circumstances for which we are not at fault release us from receipt and acceptance of delivery of goods or services for their duration. This applies even when these circumstances do not arise for us but for third parties (e.g. our customer). We will without delay inform the supplier of these circumstances and their estimated duration. To the extent that in such circumstances our compliance with the agreement becomes impossible or economically unreasonable, we shall have the right to terminate the contract by written notice to the supplier with immediate effect and without any obligation to pay damages to the supplier. There shall be no further claims. The claims of Afag remain unaffected.

### 5 Prices and payment terms

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- 5.1 The invoice shall be provided with all necessary details and sent to us in single copy after dispatch of the goods as follows:
  - Afag Automation AG, CH-Zell
  - Afag GmbH, D-Amberg
  - Afag Engineering GmbH, D-Hardt
  - Afag Americas Inc., USA-Nashville
  - Afag Shanghai Ltd., CHN-Shanghai City

[invoice.zell@afag.com](mailto:invoice.zell@afag.com)  
[invoice.amberg@afag.com](mailto:invoice.amberg@afag.com)  
[invoice.hardt@afag.com](mailto:invoice.hardt@afag.com)  
[invoice.nashville@afag.com](mailto:invoice.nashville@afag.com)  
[invoice.shanghai@afag.com](mailto:invoice.shanghai@afag.com)

The invoice must contain all order details and may under no circumstances be included with the shipment. Partial invoices may only be used if corresponding partial deliveries were ordered or if a corresponding written agreement was made. Invoices submitted incorrectly will be only regarded as received at the time of correct resubmission.

- 5.2 The agreed prices are firm and fixed and include packaging and sundry additional charges.
- 5.3 Payment will be made within 14 days with 3% discount or within 60 days net unless otherwise agreed. The payment term begins upon receipt of the invoice with all other necessary documentation. However, it may not begin before receipt and acceptance of delivery of goods or services at place of delivery and not before receipt of an agreed guarantee.
- 5.4 Payment will be made subject to invoice verification. Our payment does not constitute confirmation of fulfilment of the supplier's contractual obligations. Payment will be regarded as rendered upon receipt of the transfer order by our bank.
- 5.5 Afag reserves the right to withhold an appropriate portion of the remuneration when making payment if faults are identified within the payment period. Assertion of the right to withhold results in an interruption to the payment term so that a cash discount may be deducted after fault rectification. The same applies when the final documentation has not been received by us 14 days after product delivery at latest.
- 5.6 Advance payments and instalments require a separate agreement and must first be secured by the supplier with a directly liable and unconditional unlimited bank guarantee at the time of the initial request. The guarantee has to be subject to law in the country of the purchaser and must nominate location of the purchaser as the sole place of jurisdiction.

## 6 Delivery dates and Default

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- 6.1 All agreed delivery dates are binding. We will only allow early deliveries when these have been explicitly agreed to.
- 6.2 The supplier is obligated to inform us in writing of any impending non-compliance with the agreed date and of its consequences and of the expected period of the delay.
- 6.3 If a delivery or an agreed partial delivery is not made in full or in part at the agreed time due to the fault of the supplier, we are entitled - following the fruitless expiry of an extension period set by us - to withdraw wholly or in part from the contract or to demand compensation for non-performance. In the event of delay with regard to the delivery date, we shall be entitled to demand a contractual penalty in the amount of 1 % of the order value per commenced calendar week, but not more than 5 % of the total order value. This shall not affect our right to assert further claims for damages.

## 7 Warranty and Notice of defects

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- 7.1 In the event of any defect we are entitled to choose to withdraw from the contract, to claim damages for non-performance, to receive another delivery of defect-free goods without delay and/or to demand remedying of all defects.
- 7.2 In the event that subsequent performance by the supplier will most likely not remedy the pending disadvantage of the Purchaser, the Purchaser shall have the right to perform or make any third parties perform the necessary remedy and the costs thereof shall be borne by Supplier.
- 7.3 A notice of defect shall be considered to be given in time in case of externally visible defects if the supplier is notified within 10 working days from receipt of the goods. In case of hidden defects that cannot be discovered by regular inspection the notice of defect shall be considered to be given if the Supplier is notified within 10 working days from discovery of the defect by us or from notice being given by our customers.

- 7.4 The supplier shall be obliged to refund us for any costs arising in connection with a defect in quality, including those that are legitimately charged to us by our customers. Further, the supplier must compensate us or our customer for losses arising from business interruption, loss of profit and any other damages to the extent that the loss was caused as a result of the defective object of the contract for which the supplier was responsible.
- 7.5 If no other agreement was made, the limitation of liability for claims arising from a defect is 36 months from the transfer of risk. The same applies to substitute deliveries.
- 7.6 In case of any title defects, the supplier shall indemnify us from any potentially arising claims by third parties.

## 8 Retention of title

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- 8.1 The goods shall become our property upon payment of the complete purchase price. Any extended, expanded or other retention of title is expressly excluded.

## 9 Transfer

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- 9.1 A transfer or pledging of the supplier's rights arising from the contract may only be made with our prior written agreement.

## 10 Product liability

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- 10.1 Provided that damage occurs under the supplier's product liability obligation or provided that claims for compensation are successfully asserted against us by third parties on the basis of agreements concluded or within the scope of our product liability, and provided that a compensation claim successfully asserted against us in this manner is due to a defect of the delivered goods, the supplier will also be liable beyond the contracted or statutory requirements to make good our loss and expenses, of which proof must be furnished. The supplier shall be obliged to indemnify us – even without any own default - against claims of any product liability law that does not assume any default of the injured party (this applies in particular to the product liability laws of EU member states).

## 11 Surrender of documents, Advertising, Confidentiality

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- 11.1 Drawings, models, samples and other documents which have been provided by us to the supplier or to their subcontractors or to their vicarious agents, or which have been prepared by them to our specifications, shall remain our property and may only be used to process the bid and to execute the delivery items or services ordered and may not be made accessible to third parties without our prior written consent. At our request these must be returned to us without delay or stored as arranged with us, upon delivery of the delivery items or services ordered.
- 11.2 Those drawings, descriptions, etc. relating to the order are binding for the supplier. The supplier must check these for any inconsistencies and notify us without delay in writing of any suspected or identified errors. If there is no immediate advice provided in writing, the supplier may not cite these inconsistencies or errors at a later date.
- 11.3 If there is no immediate advice we will be entitled to claim compensation for damages in addition to all other warranties as may be expressed or implied in this contract or at law. The approval of any technical documentation shall not release the Supplier from any obligation under this contract, especially a state of the art and free of defect delivery.
- 11.4 The supplier will remain solely responsible for all drawings, plans and calculations made by them even when these have been approved by us.

- 11.5 Further, the supplier will maintain confidentiality regarding all our operational processes, equipment, facilities, etc. and those of our customers which become known to them in connection with their services for us, even after delivery of the relevant bid or completion of the relevant order and will not disclose any of this information to third parties. The supplier will impose these same obligations on their subcontractors and vicarious agents. Our enquiries, orders and related correspondence may not be used for advertising purposes.

## 12 Third-party intellectual property rights

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- (1) The supplier is responsible for ensuring that no domestic or foreign legal rights of third parties, in particular intellectual property rights such as patents, trademarks, copyright or utility models are infringed in connection with the delivery and use of the contract good. This applies even when the supplier has not been negligent.
- (2) If the supplier possesses intellectual property rights, the object of which is the use of the delivered contract good, then the supplier will grant us the right of joint use of the delivered contract good free of charge to the extent that this is required in order to achieve the purpose of the contract.

## 13 Foreign trade law, Restriction of substances

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- 13.1 In all bids and together with their certification the supplier must, unless otherwise agreed, provide the following details: (I) The export authorisation obligation of the delivery item in accordance with the EC Dual Use Regulation stating the item number, (II) the statistical commodity code and (III) the country of origin of the goods. In the event that we are not granted the required export authorisation, we will be entitled to withdraw from the agreement without prejudice to further claims.
- 13.2 To the extent that the supplier has not agreed otherwise, the supplier must provide evidence of the origin of the delivery item in compliance with the relevant regulations inter alia by way of a supplier's declaration or declaration of origin or EUR 1. In the supplier's declaration the supplier must state the origin of the delivery item in accordance with the valid rules of origin of the country of destination.
- 13.3 Existing substance prohibitions resulting from regulations in the Purchaser's country, or in the country of destination notified to the Contractor shall be complied with by the Contractor.

## 14 REACH

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- 14.1 In order to protect human health and the environment from the risks posed by chemicals, the European Union has enacted the REACH Regulation No. 1907/2006. In this context, the European Chemicals Agency (ECHA) obliges companies to provide information on the transfer of chemicals in the supply chain and to comply with bans and restrictions imposed by them. In case the orders and purchases contain substances, mixtures (preparations), articles (objects) and complex objects, the contractor must therefore confirm the following information:
- 14.1.1 The orders and purchases do not contain any substances which are subject to authorisation according to Annex XIV of REACH Regulation No. 1907/2006 (incl. consolidated versions). Should the contractor not be able to confirm this, Afag must be informed immediately.
- 14.1.2 If the orders and purchases contain substances according to Annex XVII of REACH Regulation No. 1907/2006 (incl. consolidated versions), their use complies with the specifications of the restrictions according to the list. Should the contractor not be able to confirm this, Afag must be informed immediately.
- 14.1.3 The orders and purchases do not contain any substances from the list of substances of very high concern (SVHC) eligible for authorisation according to REACH Regulation No. 1907/2006. Should the contractor not be able to confirm this, he must fulfil his duty to inform according to Art. 33 and inform Afag about the substance in articles (per individual component) and its concentration therein.

## 15 RoHS

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- 15.1 The RoHS Directive No. 2011/65/EU of the European Union indicates which restrictions and exemptions apply to the use of certain hazardous substances in electrical and electronic equipment. It also lists maximum permissible concentration values in homogeneous materials. The

aim of the directive is to ban problematic components that have been classified as environmentally hazardous from electronic waste. Since it is a directive and not a regulation, the implementation must be carried out within the framework of the respective national law. In doing so, companies will be required to provide information on the concentrations of the listed substances in the directive as well as on compliance with the maximum concentration values in the supply chain and to comply with the imposed restrictions and exemptions. To the extent that the orders and purchases include electrical equipment, electronic equipment or components for the same equipment, the contractor shall confirm the following information:

- 15.1.1 The purchase orders and purchases do not include substances in the aforementioned equipment or components that are restricted under Article 4, paragraph 1 of RoHS Directive No. 2011/65/78 (including consolidated versions). Should the contractor not be able to confirm this, Afag must be informed immediately.
- 15.1.2 The orders and purchases do not contain any substances in the aforementioned devices or components which exceed the maximum concentration values in homogeneous materials according to Annex II of the RoHS Directive No. 2011/65/78 (incl. consolidated versions). Should the contractor not be able to confirm this, Afag must be informed immediately.
- 15.1.3 The orders and purchases contain substances in the aforementioned equipment or components which exceed the maximum concentration values according to Annex III of the RoHS Directive No. 2011/65/78 (incl. consolidated versions). Accordingly, the contractor must disclose the concentrations and refer to the temporary exemption of the directive. Should the contractor not be able to comply with this, Afag must be informed immediately.
- 15.1.4 The orders and purchases contain substances in the aforementioned equipment or components which are exempted from the restriction in Article 4, Paragraph 1 according to Annex IV of the RoHS Directive No. 2011/65/78 (incl. consolidated versions). Accordingly, the contractor must refer to the clause of the same annex. Should the contractor not be able to comply with this, Afag must be informed immediately.

## 16 Code of conduct, Accident prevention and Facility regulations

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- 16.1 The supplier is obligated to comply with the laws and regulations of all countries in which the supplier is active. The supplier is particularly obligated to refrain from participating in any corrupt activity or any infringement of human rights, whether actively or passively, directly or indirectly. The supplier takes responsibility for the health and safety of their employees and for environmental protection measures. The supplier will also require this of their own suppliers and will foster this with them to the best of their ability.
- 16.2 During installation and assembly work on our customer's site or at the Afag premises, the supplier is responsible for compliance with all accident prevention regulations and with all our customer's facility regulations and with any other regulations made known to the supplier.

## 17 Cancellation, Deferred delivery

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- 17.1 We have the right at our sole discretion to terminate the Order at any time. In this event payment to the Supplier shall only be made for that portion of the work satisfactorily performed to the date of termination by written substantiated documentation verified by Purchaser. No further payments will be approved. This termination shall also be applied in case of partial delivery and/or partial order.
- 17.2 In addition to exercising any other rights and remedies available to the Purchaser we have the right to terminate the contract or withdraw from the contract in complete or in part if the credit rating or the ability to deliver of the Supplier worsens in such a degree that fulfilment of the contract appears compromised, the supplier stops payments or an application is made to open insolvency proceedings against the supplier's assets.

## 18 Place of performance, Place of jurisdiction, Applicable law

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- 18.1 The place of performance for the delivery is the destination named in the order. Should such a place not be named, the place of performance shall be the principal's registered office. This also applies to payments.
- 18.2 The place of jurisdiction is the court with jurisdiction for the purchaser.

- 18.3 The contractual relationship is based upon the law of the country of the customer. The United Nations Convention on Contracts for the International Sale of Goods is excluded from application.

## 19 Other

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- 19.1 All rights and obligations of the parties are conclusively regulated in this agreement. No verbal ancillary agreements will apply. Amendments or supplements to these terms including any appendices must be in writing to take effect. This also applies to the rescinding of the requirement of the written form.
- 19.2 If individual provisions in this agreement are ineffective or incomplete, then the validity of the remaining provisions will remain unaffected thereby. In lieu of the ineffective clause, the regulation which most closely satisfies the intent of the parties will apply. The statutory provisions will otherwise apply.

Date of effect: 06.03.2023