

# ALIVION GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

## 1 GENERAL

- 1.1 All purchases of Alivion shall exclusively be subject to these General Terms and Conditions for Purchase of Goods and Services (abbreviated in the following as 'GTC'), unless otherwise agreed with Alivion in writing. Purchases may include raw materials, parts, goods, products, equipment, machines, tools, other materials, services or work (collectively named 'Supply' or 'Supplies' in the following). Any contrary or additional terms contained or referred to in any quotation, order acceptance, contracts, other documents or correspondences from the Supplier shall be overruled by these GTC. Any payment or acceptance of Supplies by Alivion do not constitute agreement. The Supplier entirely agrees to be bound to Alivion's GTC by accepting Alivion's order.

## 2 ORDERS

- 2.1 In all events, the Supplier is solely responsible for the procurement of the supplies and services needed for the ordered Supplies.
- 2.2 Orders as well as supplements and modifications thereof must be made in writing. Alivion may provide forecasts that are for planning purposes only and do not constitute any commitment by Alivion.
- 2.3 Orders may be cancelled or postponed in whole or in part by Alivion without cancellation fee or other liability by providing a cancellation note to Supplier prior to shipping by Supplier.
- 2.4 Alivion may cancel or terminate any order or contracts at any time for customized parts or machinery equipment. Proof of reasonable expenses which occurred to fulfil the obligations up to the date of termination shall be provided by Supplier. Alivion shall reimburse such expenses provided that Supplier provides a detailed cost list immediately upon receipt of Alivion's notice of cancellation. Alivion does not allow Supplies to be sold to third parties. Alivion shall not pay Supplier (or its subcontractors) for any work done after receipt of notice of cancellation.

## 3 DELIVERY AND PERFORMANCE OF SERVICES

- 3.1 Delivery shall be made in accordance with the International Commercial Terms (Incoterms) in force at the time of order. Unless otherwise agreed in writing by a representative of Alivion, delivery shall be made DAP to Alivion in Bisingen, Germany (Incoterms 2020).
- 3.2 A packing or delivery note with detailed contents as well as the complete order number shall be included in each delivery. Whenever applicable, such note must include all necessary export licensing requirements (e.g. Export Control Classification Number, Export Control List Number according to EC Dual Use Regulation or national law, HS Code) and entitlement to preferences (e.g. country of origin, preferential country of origin, movement certificates, declarations and certificates of origin). In case of missing or incorrect shipping documents, certificates of origin or documents required for turnover tax law, Alivion reserves the right to refuse the Supplies at the Supplier's risk and expense.
- 3.3 Supplier agrees to deliver Supplies on the defined delivery date in the order. If the Supplier fails to meet the delivery date, Supplier shall pay Alivion compensation at an amount of 2% of the price of the delayed partial shipment for each complete week of delay. Partial deliveries are permissible only after Alivion's prior approval and they should be indicated as such. In addition, unless the Supplier is not responsible for the delay, it shall indemnify and compensate Alivion for all direct and indirect costs and damages from failure to respect the delivery deadline that exceed the above amount of 2% per week.
- 3.4 If Supplier realizes that it cannot comply with a delivery date, Supplier shall notify Alivion in writing without undue delay

providing reasons for the delivery delay. In case of later delivery, Supplier shall make all efforts at its own cost to keep any delay as minimal as possible. Supplier is obliged to inform Alivion immediately about any supply difficulties as soon as it becomes aware of them itself.

- 3.5 The Supplier agrees to provide Alivion with all assistance, advice and training reasonably required to permit Alivion to use or operate the Supplies.
- 3.6 These provisions of article 3.4 shall also apply to a delay in subsequent performance and where, due to a deficiency or defect of a Supply (particular to work, machinery and equipment), the Supply may not be used for its intended purpose.
- 3.7 All claims and all other legal rights are reserved. Unconditional acceptance of a delayed delivery or performance does not constitute waiver by Alivion of claims or damages arising from such delivery.

## 4 QUALITY ASSESSMENT AND ACCEPTANCE

- 4.1 Delivery of Supplies or provision of services shall not be deemed to be acceptance of such supplies or services by Alivion. Alivion shall have reasonable time to assess or tests the quality of supplies or services and to report any defects to supplier. If a defect in the supplies and/or services was not reasonably detectable during the quality assessment, Alivion shall have reasonable time to provide notice of such defect after it has become apparent and/or to reject the supplies and/or services.
- 4.2 The parties may agree on a certain acceptance procedure, in which case acceptance will be subject to Alivion's written acceptance statement. Supplier shall inform Alivion in writing within a reasonable time period in advance when the supplies and/or services are ready for acceptance.
- 4.3 Alivion may enforce any remedy defined in the contract for any rejected supply or service.

## 5 RISK AND TITLE

- 5.1 For Supplies involving installation, commissioning or services, the transfer of risk occurs on acceptance and for Supplies not involving installation or commissioning, the transfer of risk shall be upon receipt by Alivion at the designated place of receipt.
- 5.2 Title shall pass to Alivion on the date of delivery or on the date the payment has been made by Alivion, whichever occurs first.
- 5.3 All materials and information transmitted, made available and disclosed by Alivion (including materials containing confidential information) shall remain or become property of Alivion. The Supplier shall be liable for any damage to such Alivion property.

## 6 WARRANTY AND REMEDIES

- 6.1 Supplier warrants that the supplies are new and unused at the date of delivery and remain free from defects during the warranty period.
- 6.2 The warranty period is 24 months from the delivery, unless otherwise agreed in writing with a representative of Alivion. In case of breach of any warranty, which is not remedied within 48 hours from Alivion's notification, Alivion is entitled to enforce any or all of the following remedies at its discretion and at Supplier's expense: (a) to give Supplier an opportunity to carry out any additional work necessary to fulfill the contract; (b) to require Supplier promptly to repair or replace the defective supply or service; (c) to carry out or to instruct a third party to carry out any additional work necessary to make the supply or service comply with the contract; (d) to refuse any further supplies and/or services; (e) to require Supplier to indemnify and hold harmless Alivion for such damages as may have been sustained by Alivion as a result of Supplier's breach of the contract; and (f) to terminate

the contract without obligation to compensate Supplier and Supplier shall pay back to Alivion any remuneration received from Alivion for the supplies and/or services and take back the supplies at Supplier's own cost and risk.

- 6.3 In case of breach of any warranty, the entire warranty period shall be restarted for the defective supply and/or service from the date the remediation is completed to Alivion's satisfaction.
- 6.4 The rights and remedies available to Alivion under the contract are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 7 PRODUCT LIABILITY AND GENERAL INDEMNIFICATION

- 7.1 Without prejudice to applicable mandatory law, Supplier shall, without any limitations, indemnify and hold harmless Alivion for all liabilities, damages, cost, losses or expenses incurred by Alivion as a result of Supplier's breach of the contract. Supplier shall, without any limitations, indemnify and hold harmless Alivion for any claim made by a third party against Alivion in connection with the supplies and/or services, including but without limitation to claims that such supplies and/or services infringe a third party's intellectual property rights. Upon Alivion's request, Supplier shall defend Alivion against any third party claims.
- 7.2 Supplier is responsible for the control and management of all of its employees, suppliers and subcontractors, and it is responsible for their acts or omissions as if they were the acts or omissions of Supplier.
- 7.3 Supplier shall maintain in force, and upon request provide evidence of, adequate liability insurance and statutory worker's compensation/employer's liability insurance with reputable and financially sound insurers, which however will not relieve Supplier from any liability towards Alivion. The insured amount cannot be considered as limitation of liability.
- 7.4 At no cost for Alivion, Supplier shall take out an insurance policy with appropriate coverage against all risks resulting from product liability. Upon request by Alivion, Supplier shall provide evidence for such an insurance. Supplier shall give written notice to Alivion at least 30 days before in the event of material change or cancellation of insurance coverage.
- 7.5 Alivion reserves the right to set off any claims under a contract against any amounts owed to Supplier.

## 8 PRICES

- 8.1 Unless otherwise agreed in writing by a representative of Alivion, prices shall be net DAP (Incoterms 2020) including packaging. Place shall be the location of the Alivion's affiliate.
- 8.2 Payments do not constitute acknowledgment of quantity, price and quality. Payment does not constitute an acknowledgment that the Supplies were provided in accordance with the contract.
- 8.3 Cost estimates and offers are maximum prices and shall be the maximum sum which Alivion owes to Supplier in fulfilment of the contract. Price shall include all applicable taxes, duties, fees and charges as well as all required services, whether or not such taxes, etc. and services have been specified in the contract. If applicable, the value-added taxes shall be invoiced separately by the Supplier and paid by Alivion to the Supplier. Supplier warrants, that the prices for the Supplies are not less favourable than those currently extended to other customers for similar Supply quantities.
- 8.4 Unless otherwise agreed in writing by a representative of Alivion, payments shall be effected within 90 days net after receipt of the Supplier's invoice following transfer of risk (see article 5.3). A delay in payment is only deemed to have occurred if Alivion has received an invoice from Supplier, after transfer of risk, and an additional period which has been set in a formal reminder has expired.
- 8.5 If the Supplier is required to provide quality control documents (or any other documentation), test records or material testing, these shall be part of the requirements for completeness of the delivery and the period of payment shall not commence before

completeness. The period for payment shall not commence before complete rectification of any deficiency.

## 9 SUBCONTRACTING TO THIRD PARTIES

- 9.1 Subcontracting to third parties shall not take place without prior written consent of Alivion and it entitles Alivion to cancel the contract wholly or in part and claim associated damages.

## 10 COMPLIANCE

- 10.1 Supplier shall comply with the applicable laws and all statutory provisions governing the treatment of employees, environmental protection, health and safety at work. In particular, Supplier shall not engage (actively or passively) nor directly or indirectly in any form of bribery, in any illegal, unfair or deceptive trade practices or unethical business practices, in any violation of basic human rights of employees or any child labour.
- 10.2 Any permits or certificates required must be procured by the Supplier free of charge for Alivion. If, irrespective of Alivion's acceptance, the execution of the supply and/or service is not recognized as conforming under the regulations and laws in force, and any changes are prescribed, then these will be carried out by Supplier at Supplier's own risk and expense.
- 10.3 Supplier represents and warrants that it complies with the EU Directive 2011/65/EU (RoHS Directive), EU Directive 2012/19/EU (REACH Directive), EU Directive 2006/66/EC (Battery Directive), and EU Directive 2012/19/EU (WEEE Directive), as well as any and all directives or regulations that are equivalent or similar to these Directives.
- 10.4 Should supplies contain any substances that are classified as dangerous substances, according to international regulations, the Supplier shall inform Alivion in writing no later than the date of order confirmation.
- 10.5 Supplier agrees to comply with the provision of all relevant CE-Directives and shall accordingly perform and furnish the required declarations in connection therewith. Always the latest version of these Directives shall apply. Technical documentation shall be retained for at least 10 years following the delivery date to Alivion or after manufacture of the last unit (whichever occurs later) and shall be kept available for Alivion at request.
- 10.6 Supplier shall comply with Alivion's safety and security regulations and shall take all precautions required to prevent injury to persons or property if any supply and/or service requires performance by Supplier at Alivion's premises. Related instructions by Alivion must be signed by Supplier representatives.
- 10.7 Supplier shall comply with applicable export controls, customs and foreign trade regulations for all supplies. Supplier shall also obtain all necessary export licenses, unless Alivion is required to apply for the export license pursuant to the applicable foreign trade regulations. Supplier shall provide any other foreign trade data with respect to their supplies and their components in writing upon request and shall inform Alivion about all changes to such data without delay and prior to supply.
- 10.8 Supplier shall inform Alivion in writing about applicable (re-)export license requirements for the supplies under European and US control law and customs regulation as well as the export control law and customs regulations of the country of origin of the supply. Therefore and in addition to the requirements listed in article 3.2, at least in its offer, order confirmations and invoices, Supplier shall provide the following information with respect to supplies: Export Control Classification Number for US goods (including technology and software)
- 10.9 Supplier shall be responsible for any and all costs and/or losses incurred by Alivion as a result of failure to observe these provisions or the inaccuracy of said export control and foreign trade data, or if the fulfilment of the contract is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes of other sanctions.
- 10.10 Supplier shall ensure that its sub-contractors at all time act in accordance with this contract in all respects and shall remain fully liable for each subcontractor's obligations as for its own.

**11 RIGHT TO AUDIT**

- 11.1 Complete and accurate records of all costs of performance under the order shall be recorded and kept by Supplier. These records shall be made available to Alivion for inspection and audit in the event of equitable adjustments or termination or with respect to any order for which price is based on time and cost of material.

**12 INTELLECTUAL PROPERTIES RIGHTS AND SOFTWARE USE**

- 12.1 Supplier hereby grants Alivion, or undertakes to procure, that Alivion is granted a worldwide, irrevocable, transferable, sub-licensable, non-exclusive, royalty-free license to use the intellectual property rights in the supplies, including embedded software.
- 12.2 Supplier herewith assigns to Alivion full ownership rights in any intellectual property rights in supplies resulting from the services. Supplier further agrees, upon Alivion's request and at Supplier's cost, to take all further steps necessary to perfect Alivion's ownership to the intellectual property rights.
- 12.3 Intellectual property rights in any supplies created by or licensed to Supplier prior or outside the contract will remain vested in Supplier (or the third owner party). To the extent that pre-existing intellectual property rights are embedded in any supplies resulting from the services, Supplier grants, or undertakes to procure that the third party owner grants, Alivion worldwide, irrevocable, transferrable, sub-licensable, non-exclusive, royalty-free license to use the pre-existing intellectual property rights as part of such supplies, including the right to improve, develop, market, distribute, sub-license or otherwise use such pre-existing intellectual property rights.
- 12.4 Open-source software contained in or used by embedded software must be specified in writing to Alivion and requires Alivion's written approval prior to delivery. Supplier agrees to replace at its own cost any open-source software components rejected by Alivion with software of at least the same quality and functionality.
- 12.5 If any claim is made against Alivion that the supplies and/or services infringe a third party's intellectual property rights, Supplier shall at its own cost, but at Alivion's discretion: (a) procure for Alivion, as the case may be, the right to continue using the supplies and/or services; (b) modify the supplies and/or services so they cease to be infringing; or (c) replace the supplies and/or services with non-infringing equivalents. Otherwise, Alivion is entitled to terminate the contract and to reclaim all sums which it has paid to Supplier thereunder.

**13 CONFIDENTIALITY**

- 13.1 Supplier shall keep confidential and shall not disclose to any third party any technical or commercial information that it has acquired from Alivion as a result of discussions, negotiations or other communications, as well as any materials derived thereof, unless it is proven public knowledge or prior written consent has been provided by Alivion. Confidential information from Alivion shall only be shared with those employees of the Supplier who necessarily need to be involved in the use thereof for the purpose of delivering to Alivion and who are also committed to confidentiality. The technical or commercial information remains the exclusive property of Alivion. Such information shall be used by the Supplier only in connection with the Supplies and exclusively in the interests of Alivion. All necessary measures to ensure that no information is disclosed to a third party (including Supplier's subcontractors) shall be taken by the Supplier.
- 13.2 All confidential information (including copies thereof) provided to Supplier shall be returned within 30 days after Alivion's request. Supplier shall destroy all documents or other writings prepared based on Alivion's confidential information.
- 13.3 Alivion shall be entitled to use any documents or other writings, drawings etc. obtained from Supplier in connection with the contract or order for any purpose.

**14 INDEPENDENCE OF CONTRACTOR**

- 14.1 Supplier is an independent contractor, and it is solely responsible for determining the means and methods for performing.
- 14.2 Supplier shall have complete responsibility for its employees or representatives, and these shall neither act as nor be agents or employees of Alivion.

**15 FORCE MAJEURE**

- 15.1 Force Majeure, labour disputes, disruption in operation beyond the concerned Party's reasonable control, disturbances, governmental measures, and other unforeseen circumstances shall entitle Alivion (without prejudice of other rights) to withdraw wholly or partially from this contract if these events continue for a considerable period of time or result in a considerable decrease of Alivion's demand.
- 15.2 Alivion shall not be required to accept Force Majeure as an excuse if the Supplier cannot prove that it has taken all reasonable actions to mitigate the effects of claimed Force Majeure. Labour or material shortages shall not constitute Force Majeure unless such a shortage is caused by circumstances which themselves constitute a Force Majeure event.

**16 TERMINATION OF CAUSE**

- 16.1 Additionally to the cancellation rights in article 2 of this GTC, Alivion may terminate any contract or orders at any time by giving written notice to Supplier, if (a) in the judgment of Alivion, Supplier's financial condition endangers performance of the order; or if (b) Supplier fails to deliver or perform within the time specified in the order or contract; if (c) Supplier fails to make progress so as to endanger performance; or (d) a substantial breach of the contract by Supplier occurred.

**17 SURVIVAL**

- 17.1 The terms and conditions of this GTC (in particular the warranty, intellectual property rights/infringement and software use, confidentiality, supply discontinuation, long-term supply, product liability, general indemnification, insurance, law and jurisdiction) will continue in full force and effect after the cancellation, expiration or termination of any contract or order.

**18 SEVERABILITY**

- 18.1 If at any time any provision of these GTC or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The invalid or unenforceable provision or part thereof shall be replaced by a valid or enforceable provision, which shall best reflect the original intention and shall to the extent possible achieve the same economic result.

**19 NO WAIVERS AND REMEDIES**

- 19.1 Alivion's failure to require performance of any provision or to resort to any remedy provided under this contract at any time shall in no way limit Alivion's right to require performance or to resort to a remedy at any time thereafter, nor shall the waiver of a breach be deemed to be a waiver of any subsequent breach.
- 19.2 Any waiver, amendment or modification of any right, power or remedy hereunder shall not be effective unless it is in writing and signed by an authorized representative of Alivion and Supplier.
- 19.3 Alivion's rights and remedies in this GTC are in addition to any other rights and remedies provided by law or equity.

**20 LAW AND JURISDICTION**

- 20.1 This GTC shall in all respects be governed by and construed in accordance with Swiss law. The UN Convention on the international sale of goods (CISG) shall not apply to this contract.
- 20.2 Any dispute, controversy or claim arising out of, or in relation to, this contract shall be subject to the exclusive jurisdiction of courts of the Canton of Zug, the venue being Zug, Switzerland. However, Alivion is entitled to take legal action against the Supplier in the court with jurisdiction at the Supplier's place of business or at the place of performance.