
General Terms and Conditions of Purchasing and Ordering of CENIT AG

as of January 2013

1. Scope

- 1.1 These General Terms and Conditions of Purchasing and Ordering of CENIT AG and its affiliated companies (hereinafter referred to as CENIT) apply to all orders by CENIT for deliveries provided that the supplier is entrepreneur within the meaning of Sec. 14 German Civil Code (*BGB*) and the contract relates to the operation of the enterprise. They further apply in relation to legal persons under public law and special public funds within the meaning of Sec. 130 Para. 1 German Civil Code (*BGB*).
- 1.2 These General Terms and Conditions of Purchasing and Ordering apply accordingly to work performances and services. In case of work performance, taking of the delivered items shall be replaced by acceptance of work, and in case of services by receipt of the service.
- 1.3 Any terms and conditions of the supplier conflicting with, in addition to, or deviating from these General Terms and Conditions of Purchasing and Ordering shall not apply even if CENIT did not expressly object to them. This applies accordingly in case CENIT unconditionally accepts deliveries or performances, having knowledge of the supplier's conflicting, additional, or deviating terms and conditions.
- 1.4 These General Terms and Conditions of Purchasing and Ordering, as amended from time to time, also apply to all future business transactions with the supplier.
- 1.5 The supplier is entitled to entrust third parties with deliveries and performances or parts thereof, or to have deliveries and performances or parts thereof performed by third parties, with the prior written consent of CENIT only.

- 1.6 Rights exceeding these General Terms and Conditions of Purchasing and Ordering that CENIT is entitled to pursuant to legal provisions or other agreements remain unaffected.

2. Conclusion of Contract, Integral Parts of Contract

- 2.1 Orders are legally binding only if placed in writing or confirmed in writing by CENIT and showing an order number. Oral agreements or deviations do not exist except confirmed by CENIT in writing. Any order processed by use of automatic appliances and lacking signature and name is considered a written order. To the extent the order contains obvious errors, misspellings, or miscalculations, CENIT shall not be bound to it.
- 2.2 Orders will not be legally binding any longer if the supplier fails to accept such order in writing within two weeks from receipt together with a binding confirmation of the price and delivery or performance period. The order is deemed accepted if performed by the supplier within such period without prior written confirmation. Deviations of the order confirmation or performance of the order from the order placed by CENIT are not deemed agreed until CENIT has confirmed them in writing. The same shall apply to subsequent contract changes.
- 2.3 Silence of CENIT as to offers, requests, or other declarations of the supplier is deemed consent only if there is a prior written agreement to that effect.
- 2.4 Integral parts of the contract are in the following priority sequence: order, specification of CENIT, General Terms and Conditions of Purchasing and Ordering of CENIT.
- 2.5 CENIT reserves all rights of ownership, copyrights, and any other property rights to all performance and product descriptions, test programs, calculations, and other materials made available by CENIT to the supplier in connection with

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- inquiries, orders, or otherwise with the performance of the contract. Such materials are subject to the confidentiality obligation under Sec. 13. They have to be promptly and unrequestedly returned to CENIT after processing of the order or in case no contract has been concluded.
- 2.6 Should the supplier file a request for the opening of insolvency or comparable proceedings against its assets, or should the justified request for the opening of insolvency or comparable proceedings against the supplier's assets filed by a third party be denied for lack of assets, CENIT may rescind the contract in whole or in part.
- 3. Prices, Payment**
- 3.1 All prices quoted by CENIT in orders are binding. Unless otherwise stated in writing in the order, the prices are fixed.
- 3.2 Deliveries and performances are to be understood free to the "place of performance" unless otherwise stated in the order. Place of performance is the delivery address specified in the order.
- 3.3 Unless otherwise agreed in writing, the price quoted by CENIT includes any and all transport, insurance, packing, and other ancillary costs and fees as well as customs duties and other public levies up to and including the delivery respectively assembly in operable condition at the delivery address specified by CENIT. To the extent the delivery or performance is subject to VAT, such VAT is to be shown separately.
- 3.4 Unless otherwise stated in the order or in any other written agreement, the price in particular includes the costs for any mounting, installation, integration, and transferring works that may be necessary and that are to be provided by the supplier without interfering with the normal business operation of CENIT, if necessary also outside the normal business hours.
- 3.5 Instructions relevant to the use of the delivery item with respect to operation, use, and service or any other documents to be prepared by the supplier shall be supplied in German and English unless a different language is stated in the order. Such instructions and documents are included in the price.
- 3.6 After proper delivery or performance, the supplier will send CENIT invoices in duplicate, stating the date and number of the order of CENIT. Invoices lacking these statements are deemed not to have been submitted; the payment term will not commence in such case.
- 3.7 Payment will, subject to proper, in particular complete delivery or performance and acceptance (pursuant to Sec. 8), be made within 30 days from the receipt of invoice net cash or within 14 days from the receipt of invoice less 3% discount.
- 3.8 In case of improper delivery or performance, CENIT may retain proportionate payment until the proper fulfillment, without losing discounts, rebates, or similar deductions. Payment of the invoice amount without reservations by CENIT shall not constitute acknowledgement of the supplier's delivery or performance as proper. The payment term will not commence until the proper delivery or performance.
- 3.9 In case of early delivery or performance, the payment term shall commence not earlier than upon expiration of the delivery period or on the agreed delivery date.
- 4. Assignment of Claims, Set-Off, Right of Retention**
- 4.1 The supplier is not entitled to assign claims against CENIT to any third party or to have collected such claims by third parties without the prior written consent of CENIT.
- 4.2 Payments are made to the supplier exclusively. Counterclaims may be set off by the supplier only if determined in a legally final manner or if they are undisputed.
- 4.3 A right of retention may be exercised by the supplier only insofar as its counterclaim is based on the same contractual relationship.

5. Delivery and Performance Periods and Dates

- 5.1 Delivery and performance periods and dates stated in the order of CENIT or otherwise agreed are binding. The periods commence on the date of the order respectively the date of the other agreement made. The delivery periods and dates are deemed met if within the period or by the date, the delivery has reached the delivery address stated by CENIT. In case of work performance or other performance, the work or other performance must be rendered properly, in particular completely, within the agreed period or by the agreed date. CENIT is not obligated to accept partial deliveries or partial performances.
- 5.2 The supplier undertakes to promptly notify CENIT in writing of any events that make delays in delivery or performance apparent, stating the reasons and anticipated duration of the delay.
- 5.3 In case of delay in delivery or performance, CENIT is entitled to claim a contractual penalty in the amount of 0.5% of the net order value for each commenced week of delay, however not exceeding an overall amount of 5% of the net order value, unless the supplier is not responsible for the delay. CENIT will claim the penalty together with the final payment at the latest. Further claims of CENIT remain unaffected. CENIT's claim for delivery or performance is not excluded until the supplier renders compensation for damages in lieu of delivery or performance upon request of CENIT. Acceptance of delayed delivery or performance does neither constitute waiver of damage claims nor waiver of the contractual penalty.
- 5.4 Force majeure, strike, or other inevitable and unforeseeable events release the supplier from its delivery and performance obligations for the duration of the hindrance and in the scope of the hindrance's effect only. The supplier undertakes to make all reasonable efforts to promptly provide CENIT with all necessary information in writing and to adapt its obligations in good faith to the new situation. CENIT is released from its obligation to accept the ordered delivery or performance in whole or in part and enti-

led to rescind the contract insofar as CENIT is, on legitimate grounds, no longer interested in the delivery or performance due to the delay in delivery or performance caused by such hindrance.

- 5.5 In case of early delivery, CENIT reserves the right to return the shipment at the supplier's expense and risk. Should no return shipment take place, the delivery item will be stored at the supplier's expense and risk until the agreed delivery time.

6. Work Results, Property Rights, Rights of Use

- 6.1 The proprietorship of all work results including all inventions, test and development reports, drafts, computer programs, designs, suggestions, samples, and models achieved by the supplier in connection with the execution of the delivery or performance are exclusively due to CENIT from their creation onwards to the extent legally permissible.
- 6.2 To the extent work results are subject to Intellectual Property (IP) rights, CENIT is entitled to register such IP rights in its own name and at its own expense in Germany and abroad and/or to transfer them to third parties. The supplier will promptly provide CENIT in writing with all information necessary in this context and assist CENIT in filing the IP rights applications against reimbursement of the expenses incurred. The supplier will fully claim inventions subject to IP rights and made by any of the supplier's employees when performing the order, by way of declaration vis-à-vis the respective inventor and transfer them to CENIT upon the latter's request against reimbursement of the statutory workers compensation. In any other respect, the transfer of the IP rights by the supplier is compensated through the respective remuneration to be paid for the delivery or performance.
- 6.3 To the extent the work results are subject to Copyright protection, the supplier herewith grants CENIT the exclusive, irrevocable, transferable, and sublicenseable right unlimited in terms of time, territory and contents to use such works results with respect to all types of

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- use in its sole discretion, in particular to reproduce, disseminate, display, publicly distribute them or make them available to the public, and to change or process them in any way whatsoever. The granting of the right of use is compensated through the agreed remuneration to be paid for the delivery or performance.
- 6.4 Regarding the creation of computer programs, CENIT's IP rights and rights of use also encompass the related source codes and related documentation. The supplier is obligated to promptly release them to CENIT together with the program in the format requested by CENIT.
- 7. Passing of Risk and Title, Inspection of Incoming Goods**
- 7.1 The supplier bears the risk of any accidental destruction and any accidental deterioration of the delivered items until they have been handed over to CENIT.
- 7.2 In case the supplier is also obligated to install or assemble the delivery items at the premises of CENIT in addition to delivering them, the risk of any accidental destruction and any accidental deterioration shall pass to CENIT upon assembly or installation of the delivered items only.
- 7.3 The delivered items pass into the full unencumbered ownership of CENIT upon receipt. The supplier warrants to be entitled to resell and transfer title and ownership in the delivered items.
- 7.4 CENIT will inspect the incoming delivery items upon receipt. The supplier will be notified of any defects promptly after discovery. The notification of defects is deemed timely if submitted within a period of 10 working days starting from the delivery, or in case of hidden defects, starting from their discovery.
- 7.5 In case of delay or loss of the notification of defects, the timely sending of the notification shall be sufficient.
- 8. Acceptance**
- 8.1 The delivery of movable items to be manufactured or to be produced including software programming as well as work performances require acceptance by CENIT. In case an acceptance takes place, each party may request a formal acceptance upon completion of the performances.
- 8.2 The costs incurred by the parties through unsuccessful acceptance attempts shall be borne by the supplier.
- 8.3 Should defects be discovered through the acceptance, CENIT may refuse to accept the performance. This shall also apply in case of minor defects.
- 8.4 In case an acceptance takes place, the risk of any accidental destruction and any accidental deterioration shall, in deviation of Sec. 7 above, pass to CENIT upon acceptance.
- 8.5 In case of acceptance of movable items to be manufactured or to be produced as well as in case of acceptance of work performances, Sec. 7.3 shall apply *mutatis mutandis* with the proviso that ownership passes to CENIT upon acceptance.
- 8.6 In case of acceptance of work performances, the obligations to inspect and notify defects pursuant to Sec. 7.4 shall not apply. In case of acceptance of movable items to be manufactured or to be produced, Sec. 7.4 shall apply *mutatis mutandis* with the proviso that the period to inspect and notify apparent defects will not expire before the acceptance.
- 9. Warranties, Liability for Defects**
- 9.1 The supplier warrants that, as from the transfer of risk, the delivered items are free of any material defects and defects in title. The supplier further warrants that the delivered items comply with applicable statutory provisions and the regulations and directives of public authorities, trade associations, and industrial unions. The supplier shall indemnify CENIT from and against any and all claims of third parties asserted against CENIT or its customers by reason of breach of such provisions. This shall not apply if the supplier is not responsible therefor. CENIT shall be informed immediately in

writing if the supplier has any reservations about the execution of an order as requested by CENIT.

- 9.2 In case of defects, CENIT shall be entitled to, notwithstanding statutory claims based on defects, request as supplementary performance at its own choice remedial of the defects or supplementary delivery of delivery items free of defects by the supplier. The supplier shall bear the costs necessary for the supplementary performance. This shall also apply if the products were, in accordance with their intended use, shipped after their delivery to any place other than the delivery address indicated by CENIT.
- 9.3 In any other respect, the supplier is liable for defects according to the statutory provisions. In particular, the right to assert damage claims is expressly reserved.
- 9.4 Any exceeding guarantees of the supplier shall remain unaffected.
- 9.5 Sec. 9.1 to 9.4 shall apply *mutatis mutandis* to work performances.

10. Third Party's Rights

- 10.1 The supplier warrants that the deliveries and performances to be provided by it are free of any third party's rights, in particular free of patents, licenses, copyrights, or other property rights. This shall not apply for delivery items developed by CENIT.
- 10.2 To the extent third parties claim that deliveries or performances of the supplier infringe their property or other rights, the supplier will upon first request fully indemnify CENIT from and against all such claims and reimburse CENIT all expenses related thereto. CENIT is in particular entitled to obtain, at the supplier's expense, approval from the third party to use the delivery items or performances. CENIT will promptly notify the supplier of any such alleged infringements of property rights and, to the extent legally possible, entrust the supplier with the legal defense. The obligation to indemnify and reimburse shall not apply to the extent the supplier is not re-

sponsible for the infringement of the third party's property rights. Further claims of CENIT remain unaffected.

11. Product Liability

- 11.1 In case of product defects causing product liability in Germany or abroad, the supplier is obligated to indemnify CENIT upon first request from and against damage claims of third parties insofar as the cause of the product defect originates within its area of control or organization. Further claims of CENIT remain unaffected.
- 11.2 Within the scope of the supplier's product liability, the supplier is further obligated to reimburse CENIT any expenses incurred out of or in connection with any warning, exchange, or recall carried out by CENIT. CENIT will, to a possible and reasonable extent, inform the supplier of the contents and scope of the measures to be taken and give it the opportunity to comment. The supplier shall use its best efforts to support CENIT in the measures to be taken and shall take all reasonable measures instructed by CENIT. Further claims of CENIT remain unaffected.
- 11.3 The supplier shall be obligated to effect and maintain product liability insurance with adequate coverage of at least € 5 m. per personal injury for each individual person and per damage to property. The supplier assigns to CENIT, with effect as from today, all claims in connection with the product liability insurance with any and all ancillary rights. CENIT accepts such assignment with effect as from today. If the insurance agreement does not allow for such assignment, the supplier herewith instructs the insurance company to make payments to CENIT only. Any exceeding claims of CENIT shall remain unaffected. The supplier shall upon request provide CENIT with evidence of the conclusion and existence of the product liability insurance.
- 11.4 Should the supplier fail to duly comply with its obligations under Sec. 11.3, CENIT is entitled, without being obligated, to take out product liability insurance at the supplier's expense.

12. Liability of CENIT

- 12.1 CENIT is fully liable for damages resulting from a breach of a guarantee or from harm to life, physical injury, or harm to health. The same shall apply to intent and gross negligence or to the extent CENIT has assumed a procurement risk. CENIT is liable for slight negligence only if material obligations are violated which result from the nature of the contract and which are particularly important for attaining the purpose of the contract. If such obligations are violated, or in cases of delay and impossibility, liability of CENIT is limited to damages which must be expected to typically occur within the context of the contract. Statutory liability for product defects remains unaffected.
- 12.2 To the extent that liability of CENIT is excluded or limited, this shall also apply in respect of the personal liability of the salaried employees, staff members, representatives, and auxiliary persons of CENIT.

13. Confidentiality

- 13.1 The Parties undertake to keep strictly confidential for a period of five years from obtaining knowledge, at the latest commencing upon the last delivery or performance, all information that becomes available to them in connection with the consummation of the contract and that is indicated confidential or is in other circumstances identifiable as business or trade secrets, and – unless necessary for attaining the contract purpose – to neither record nor hand on to third parties nor exploit it.
- 13.2 Any further protection of especially confidential information and the related determination of the requirements and conditions for the use of such information require the conclusion of a separate written agreement (confidentiality agreement) in each individual case.
- 13.3 This confidentiality obligation shall not apply to the extent the information was evidently known to the other Party before commencing the contractual relationship, is common knowledge or public domain, or becomes common knowledge or public domain without the

other Party's fault. The burden of proof is to be borne by the respective other Party.

- 13.4 By appropriate binding agreements, the parties will ensure that the employees, agents, and other auxiliary agents are bound to equal confidentiality obligations.

14. Term of Contract, Termination

- 14.1 Unless otherwise agreed, the term of the respective contract and the termination rights are subject to the order of CENIT.
- 14.2 In case of works agreements, CENIT is entitled to terminate such works agreement at any time until completion of the works. CENIT is in such case obligated to remunerate the performances so far rendered by the supplier and other expenses so far incurred and evidenced by the supplier.
- 14.3 In case of continuing obligations, the right for termination without notice for cause remains reserved. Cause is in particular given for CENIT if:
- a) the supplier files a request for the opening of insolvency or comparable proceedings against its assets, or if the justified request for the opening of insolvency or comparable proceedings against the supplier's assets filed by a third party is denied for lack of assets, or
 - b) the supplier acts as subcontractor during a customer project of CENIT and the customer terminates the underlying main contract or refuses that performances are further rendered by the supplier as subcontractor of CENIT.

15. Final Provisions

- 15.1 The contract language shall be German.
- 15.2 Place of performance for all obligations of the supplier and of CENIT shall be the statutory seat of CENIT unless otherwise agreed.

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- 15.3 Modifications of and supplementations to the contract including these General Terms and Conditions of Purchasing and Ordering require written form. This shall also apply to the waiver of this written form requirement.
- 15.4 Should an individual provision of these General Terms and Conditions of Purchasing and Ordering or any contract entered into on the basis of these General Terms and Conditions of Purchasing and Ordering be or become ineffective or unenforceable, or should these General Terms and Conditions of Purchasing and Ordering or any contract entered into on the basis of these General Terms and Conditions of Purchasing and Ordering contain a regulatory gap, the validity of the remaining provisions shall not be affected thereby. In such case, the Parties agree to participate in creating provisions which best achieve the economic result of the ineffective or unenforceable provisions in a legally valid way. In case of a regulatory gap, the provision shall be deemed to be agreed which corresponds to the provision that would have been agreed in terms of the object of these General Terms and Conditions of Purchasing and Ordering or any contract entered into on the basis of these General Terms and Conditions of Purchasing and Ordering if the Parties had considered the matter.
- 15.5 All contracts entered into on the basis of these General Terms and Conditions of Purchasing and Ordering shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the CISG United Nations Convention on Contracts for International Sale of Goods as amended on April 11, 1980.
- 15.6 Exclusive place of jurisdiction shall be Stuttgart if the supplier is a merchant within the meaning of the German Commercial Code (*HGB*), legal person under public law or special public funds or if the supplier, at the time the action is brought, has no statutory seat or usual residence in the Federal Republic of Germany. CENIT shall also be entitled to bring an action at the supplier's statutory seat and at any other permissible venue.