

## **HYDRO Systems KG | Ahfeldstrasse 10 | D-77781 Biberach**

### **Purchasing Terms and Conditions**

Date: February 19<sup>th</sup>, 2020

#### **1. Validity**

Unless something else has been agreed, exclusively the following Purchasing Terms and Conditions shall be valid for all orders including future orders. Any deviating terms and conditions of the supplier or contractor (hereafter uniformly referred to as "Supplier") shall be valid only insofar as we have provably recognised them. These Purchasing Terms and Conditions shall be valid only for dealings with entrepreneurs and juridical persons under public law as well as special foundations under public law. In the case of a conflict between these Purchasing Terms and Conditions and a provision or a condition with regards to the orders from HYDRO, the General Business Terms and Conditions shall be prevailing.

#### **2. Issuance, Acceptance and Implementation of Orders; Changes**

- 2.1 The Supplier must promptly confirm in writing the order or a change to the order. In order to do this, the Supplier must sign the order from HYDRO and send it back to HYDRO. If HYDRO has received no proper confirmation within 5 calendar days - based upon when the order/change was received - HYDRO shall be entitled to cancel the order without the Supplier being able to assert any claims in this regard.
- 2.2 Any individual agreements concluded with HYDRO in the individual case (including any ancillary agreements, supplements, modifications of and changes to orders) shall in all cases be prevailing over these Purchasing Terms and Conditions. Subject to proof to the contrary, a written agreement and/or HYDRO's written confirmation shall be prevailing for the content of such agreements.
- 2.3 Any deviations with regards to technical or quality-relevant specifications or standards shall require the prior documented consent from HYDRO.
- 2.4 The Supplier may have an order or essential portions of an order implemented by third parties (including sub-suppliers) only subject to the prior written consent from HYDRO. In this case, the Supplier must ensure that these Purchasing Terms and Conditions with the same wording are also valid for these third parties. The Supplier shall be liable for the fault committed by its commissioned third parties just as for its own fault.
- 2.5 Each offer from the Supplier shall be valid for at least 12 months. Written offers must be submitted within 5 working days after HYDRO's inquiry is made.
- 2.6 HYDRO may at any time make unilateral changes to the orders via a written notification. If such a change should increase or reduce the costs or the time expenditures for the implementation of the affected order, the Supplier or HYDRO may demand an appropriate adjustment of the price or the delivery timetable or both. A claim upon the Supplier's part to such an adjustment shall be valid only if this has been announced in writing to HYDRO within twenty (20) calendar days after the date of the change.

#### **3. Delivery Timeframe, Delivery Scope, Replacement Parts, Engineered Parts**

- 3.1 The Supplier shall be obliged to deliver within the timeframe specified on the order. The delivery timeframes shall be based upon the data specified in the orders.
- 3.2 Any agreed delivery timeframes shall be binding. For the fulfilment of the delivery timeframe, the receipt of the delivery at the delivery destination specified in the order shall be decisive. If delivery acceptance has been agreed or is prescribed by law, the successful acceptance is dependent on a person authorised by HYDRO.

- 3.3 HYDRO shall base its plans on the assurance from the Supplier that the Supplier will deliver the components to HYDRO within the timeframes specified in the orders. HYDRO may postpone the delivery of a binding order without any costs provided that HYDRO notifies the Supplier in writing at least ten (10) days before the planned delivery date.
- 3.4 Insofar as it becomes recognisable for the Supplier that the delivery timeframe cannot be fulfilled, it must promptly notify HYDRO of this in writing subject to the provision of reasons, the anticipated duration of the delay and the remedial measures in this regard. The acceptance of late deliveries by HYDRO shall not be considered to be a waiver upon HYDRO's part of its right to cancel this order or refuse to accept additional orders.
- 3.5 If the Supplier does not render its service or does not render it within the agreed delivery timeframe or it enters into delivery default, then HYDRO's rights – particularly with regards to rescission and damage compensation – shall be determined in accordance with the statutory regulations. The provisions of Clause 3.6 shall remain unaffected.
- 3.6 In the case that the Supplier enters into delivery default, HYDRO shall be entitled to demand a contractual penalty of 0.5 % of the net order value for each working day of the delivery default, but nonetheless at most 5 % of the net order value of the goods that are delivered late. Any more extensive claims upon HYDRO's part shall remain unaffected. HYDRO reserves the right to assert this contractual penalty until the final payment has been made. The Supplier shall be at liberty to provide evidence of lower damages than the contractual penalty.
- 3.7 The Supplier declares its agreement that the Supplier shall grant HYDRO initial priority for the allocation and the shipping of the components for the case that the delivery of components for a confirmed order from HYDRO is late.
- 3.8 The Supplier shall not be entitled to render delivery overages or delivery underages. Partial deliveries shall be permitted only upon an exceptional basis after having received HYDRO's prior documented consent.
- 3.9 The Supplier shall ensure that it can also supply HYDRO for a timeframe of 10 years after the respective last delivery of the respective delivery product at appropriate conditions with the delivery goods or portions thereof as replacement parts.
- 3.10 Insofar as the Supplier supplies articles which it has manufactured based upon a drawing provided by HYDRO (= "drawing parts"), it shall be obliged to notify HYDRO of the progress during the production process in writing upon a regular basis, but nonetheless at least weekly. The Supplier must fulfil the delivery norm issued by HYDRO for drawing parts.

#### **4. Price, Payment**

- 4.1 The agreed prices are considered to be fixed prices and to be free to the delivery destination stated in the order including packaging.
- 4.2 The payment shall be made, after the contractual receipt of the goods and the receipt of the proper and auditable invoice, within 30 days with a 3 % discount or within 60 days net. The payment timeframes shall not begin to run before the agreed delivery date.
- 4.3 If a defect is discovered that is subject to a warranty, HYDRO shall be entitled to exercise a right of retention. Any payments made shall constitute no acknowledgment of contractual fulfilment or waiver of counterclaims. This shall likewise be valid for the receipt of delivery.

#### **5. Transfer of Risk**

Risk shall be transferred to HYDRO when the delivery has been properly handed over at the delivery destination specified in the order (DDP delivery destination in accordance with Incoterms 2020) and/or – if delivery acceptance has been agreed or is prescribed by law – the delivery has been accepted by HYDRO or unless deviating delivery terms and conditions have been stated in the order.

## **6. Supply, Packaging, Delivery, Export Controlling and Customs Clearance**

- 6.1 HYDRO's packaging and delivery guidelines shall be valid as amended. Each shipment must be announced to HYDRO and to HYDRO's designated recipient on the shipping date. Each delivery must be accompanied by a delivery note as a single copy. The order number and the article number of HYDRO as well as the delivery quantity must be stated on the delivery note. The delivery note must be affixed to the exterior side of the goods and be clearly visible.
- 6.2 The Supplier shall be obliged to fulfil the specific shipping guidelines and shipping instructions that have been issued by HYDRO. This also includes supporting HYDRO with regards to importing documentation.
- 6.3 When drafting the shipping documents, the Supplier must ensure that the customs clearance is done at HYDRO and that HYDRO is released from the presentation obligation. The Supplier hereby declares that it is familiar with and fulfils the requirements and provisions of the applicable national and international customs and foreign trade law with regards to the procurement and delivery of its goods. The Supplier must promptly notify HYDRO in writing, by no later than 14 days after the confirmation of the order in accordance with Clause 2.1, of all information and data which HYDRO requires in order to fulfil the applicable national and international customs and foreign trade laws. This includes particularly the following information and data:
- All applicable exporting list numbers, particularly in accordance with Schedule I of Regulation (EC) 428/2009 ("EC Dual-Use Regulations") and Section 1 of the exporting list (Schedule 1 exporting list re. the Foreign Trade Regulation) including the Export Control Classification Number in accordance with the U.S. Commerce Control List (ECCN), the Harmonized Tariff Schedule ("HTS") Code or the U.S. Munitions List ("USML") category insofar as the good is subject to the U.S. Export Administration Regulations; likewise, the exporting classification of components or portions thereof must be disclosed if they deviate from the exporting classification for the affected good;
  - The statistical good number in accordance with the current categorisation of the goods for the foreign trade statistics and the HS (Harmonized System) Code;
  - Country of origin (non-preferential origin) and preference documentation for deliveries from preferential countries (preferential origin).

Likewise, the Supplier must notify HYDRO of any changes in the aforementioned information and data promptly and without this having to be requested.

If the Supplier violates its aforementioned obligation, it shall assume all expenditures and damages which HYDRO incurs in this regard unless the Supplier is not responsible for the contractual violation.

- 6.4 The Supplier must, at its own expense, procure all exporting or importing approvals, permits and licenses which are required in accordance with the exporting/importing laws in order to fulfil its obligations from the order. The Supplier shall be obliged to support HYDRO at its own expense during the procurement of the required licenses or permits which are required for the fulfilment of its obligations from the order. The support shall encompass the provision of the required documents including the importing, end user and retransfer certificates.
- 6.5 The long-term supplier declaration in accordance with EEC Regulation 1207/2001 must be submitted upon an annual basis.

## **7. Invoicing**

The invoice must be sent as a single copy to HYDRO's Accounting Division. It may not be enclosed with a shipment. The invoice must expressly indicate HYDRO's order and article numbers, the quantity and the price.

## **8. Quality Assurance and Inspection**

- 8.1 The Supplier and all components supplied in accordance with this Agreement must correspond to HYDRO's sketches, specifications and quality documents.

- 8.2 The Supplier shall be obliged to set up and maintain a quality control system that is acceptable for HYDRO and corresponds to the quality control norms (insofar as they are available) which are stated in the orders. The Supplier's quality assurance system shall be subject to HYDRO's confirmation and acceptance.
- 8.3 HYDRO shall reserve the right of access by its organisation, its customers and, where applicable, by the government supervisory agencies to all of the Supplier's facilities which are participating in the order and to all applicable records and it may be demanded that the Supplier instruct its sub-suppliers on the applicable requirements in the purchasing documents including the most important features as required.
- 8.4 The Supplier shall be obliged to obtain HYDRO's prior written consent if it wishes to make changes (i) to the production process of components, (ii) to the tools which are used for the production of components, (iii) regarding third-party providers or external processes or (iv) if it would like to relocate the location of the component production to another location of the Supplier (collectively referred to as "new processes"). This must occur at least sixty (60) days before the proposed date on which such a new process is supposed to be implemented. For reasons of clarity, the Supplier may sell no components, which have been produced with the Supplier's new process, to HYDRO or otherwise make them available to HYDRO until the Supplier has obtained the written approval and instructions from HYDRO which are affected by these new processes.
- 8.5 The Supplier shall be obliged to present certificates of conformity for the supplied components as well as all other appropriate documents requested by HYDRO. The Supplier shall retain all documents, which form the basis for these certificates, for a timeframe of eleven (11) years after the point in time when the affected certificates are issued. The certificates of conformity for the original manufacturer shall be required for all components and all raw materials which are used for the production of components. HYDRO reserves the right to send back the components at the Supplier's expense if the Supplier has not submitted the required documents within fifteen (15) days after the delivery. If it is determined that the Supplier has used or supplied flawed components or raw materials, all costs or expenditures which HYDRO incurs in conjunction with the repair, the exchange, the recall or the removal of such components must be assumed by the Supplier.

## 9. Rights in the Case of Defects

- 9.1 The Supplier guarantees that the delivered goods, upon their handover to HYDRO, are devoid of legal or material defects and fulfil the recognised state-of-the-art standards, the applicable laws, protection regulations and accident prevention guidelines as well as the customary and technical quality assurance norms (e.g. DIN, VDE [Association of German Electrical Engineers], VDI [Association of German Engineers], TÜV [German Technical Supervisory Authority]). In the case of conflicting formulations of these norms, the German version shall be prevailing.
- 9.2 Upon their receipt, HYDRO shall inspect the delivery goods for obvious defects, identity, delivery underages as well as transport damage. HYDRO shall have no obligation to conduct a more extensive inspection. HYDRO shall report any such defects/discrepancies to the Supplier within an appropriate timeframe after their discovery. In this regard, the Supplier hereby waives its defence of the belated notification of defects. Insofar as delivery acceptance has been agreed, HYDRO shall have no inspection obligation.
- 9.3 In the event of defects, HYDRO shall be entitled to the statutory warranty rights. In the case of defects, HYDRO may also demand a replacement delivery for the defective delivery goods instead of a rectification. Moreover, HYDRO shall be entitled, after the fruitless lapsing of an appropriate extension period that has been set for the Supplier and at the Supplier's expense, to eliminate the defect on its own or have it eliminated by a third party or to otherwise procure replacement goods. If the subsequent performance by the Supplier is unsuccessful or unreasonable for HYDRO (e.g. owing to a special urgency, a risk to operational security or the looming occurrence of disproportionate damages), no setting of an extension period shall be required. HYDRO shall notify the Supplier of such sets of circumstances promptly – if possible, beforehand.
- 9.4 The Supplier must assume all expenditures for the purpose of the rectification at or replacement deliveries to the respective usage location of the goods. Upon the Supplier's request, HYDRO shall notify it of the usage location.
- 9.5 The statute of limitations timeframe for claims for defects shall be 36 months after delivery is made or – if such has been agreed or prescribed by law – after delivery acceptance has been made.
- 9.6 If the Supplier rectifies delivery goods or replaces them, in whole or in part, the statute of limitations period in accordance with Clause 9.5 shall begin to run anew for this defect to these parts unless it concerns a minor subsequent performance expenditure or an express goodwill action by the Supplier.

## **10. Provision of Objects and Information, Confidentiality**

- 10.1 HYDRO reserves the ownership to any samples, models, sketches, templates, tools and other objects which are provided to the Supplier in order to manufacture the ordered delivery goods or for any other reasons (hereafter, "Objects"). The Supplier shall be obliged to use these Objects exclusively for the manufacture of the ordered delivery goods or in accordance with the other instructions issued by HYDRO. Such Objects may not be made available to third parties.
- 10.2 The processing or reworking of the Objects shall be undertaken by the Supplier for HYDRO. Insofar as such Objects are processed with other Objects not belonging to HYDRO, HYDRO shall acquire co-ownership to the new object based upon the proportional value of the object of HYDRO to the other processed materials at the time of the processing.
- 10.3 Insofar as the security rights to which HYDRO is entitled in accordance with the aforementioned provisions exceed the purchase price plus the VAT for all goods subject to the reservation of ownership which have not yet been paid for by more than 10%, HYDRO shall, upon the Supplier's request, be obliged to release the security rights of HYDRO's choosing.
- 10.4 The Supplier must insure the Objects at its own expense at original value against damages from fire, water and theft. It shall herewith assign to HYDRO all claims for benefits from this insurance coverage. HYDRO hereby accepts the assignment. The Supplier shall be obliged to promptly implement the required maintenance and inspection work as well as all repair and servicing work to the Objects at its own expense. It must promptly notify HYDRO of any damage that is discovered.
- 10.5 The Supplier shall be obliged to maintain strict secrecy regarding all information arising from the cooperation insofar as it is not generally known, has been legally acquired from third parties or has been created independently of third parties and to use it exclusively for the purposes of the Agreement. Protected information shall include particularly technical data, procured quantities, prices as well as information regarding products and product developments as well as regarding current and future research and development projects. If the parties have concluded a separate Confidentiality Agreement, the provisions of the Confidentiality Agreement shall take precedence over these Purchasing Terms and Conditions.
- 10.6 Protected information in accordance with Clause 10.5 and/or delivery goods which the Supplier manufactures, in whole or in part, based upon the instructions issued by HYDRO or while using the Objects (hereafter, "Protected Delivery Goods"), may be disclosed or made available to third parties only after having received HYDRO's prior written consent in this regard. HYDRO shall nonetheless approve a dissemination of protected information or Protected Delivery Goods to third parties if and insofar as the Supplier has ensured the protection of the information or of the Protected Delivery Goods before the dissemination of the information or the Protected Delivery Goods by means of contractual provisions which correspond at minimum to the aforementioned confidentiality obligations (Clause 10.5). Upon HYDRO's request, the Supplier shall be obliged to disclose and document the contractual provisions concluded with the third party.

## **11. Proprietary Rights**

- 11.1 The Supplier guarantees that neither the delivery goods themselves that it has supplied nor their usage – particularly their subsequent delivery, subsequent processing or subsequent usage by HYDRO – violates third-party proprietary rights – above all utility models, patents or licenses or any other rights or business or trade secrets of third parties – including in the country of usage.
- 11.2 Upon the initial written request to do so, the Supplier shall indemnify HYDRO and its customers from any third-party claims arising from any legal violations and shall assume all costs which HYDRO incurs in this context. However, the Supplier shall not be liable insofar as it manufactured the delivery goods exclusively according to HYDRO's sketches and models and it did not know, or did not have to know, that the manufacture of these delivery goods would violate third-party rights.

## **12. Reservation of Title**

The transfer of title of the delivery goods to HYDRO must be made unconditionally and without taking into consideration the payment of the price. If HYDRO nonetheless accepts an offer upon the Supplier's part for the transfer of title which is

contingent in the individual case upon the payment of the purchase price, the Supplier's reservation of title shall lapse by no later than the payment of the purchase price for the delivery goods that have been supplied. Moreover, HYDRO shall remain entitled, during ordinary business dealings and even before the purchase price has been paid, to resell the delivery goods subject to the prior assignment of the resulting payment claim (alternatively, the validity of the reservation of title which is simple and extended to resale). In all cases, all other forms of reservation of title – particularly of the reservation of ownership which is expanded, passed-on and extends to further processing shall be excluded.

### **13. Product Liability and General Liability**

- 13.1 The Supplier shall be liable in accordance with the legal provisions.
- 13.2 In the case that HYDRO has claims asserted against it by a customer or any other third parties which are based upon product liability, the Supplier shall be obliged, upon HYDRO's initial written request, to indemnify HYDRO from such claims insofar as and to the extent that the damages have been created or co-created by a defect in the delivery good supplied by the Supplier. However, in cases of fault-based liability, this shall not be valid if the Supplier has committed no fault.
- 13.3 The Supplier shall, in any case, assume the costs and expenditures which correspond to its proportional amount of the cause/fault for the defect – including the costs for any legal defence or recall campaign; this shall also be valid for any recognisable or looming serial defects.
- 13.4 The Supplier shall be obliged to maintain a product liability insurance policy with a coverage amount of at least 5,000,000 euros per case of personal injury / property damage – upon a lump-sum basis. Upon HYDRO's request, the Supplier shall provide proof of this insurance coverage to HYDRO.

### **14. Compliance with the Laws; Termination owing to an Important Reason**

- 14.1 The Supplier guarantees that, during the implementation of the work in accordance with this order, all applicable laws, directives and/or other legal requirements shall be fulfilled which are applicable to, or may be applicable in the future to, the manufacture, the sale or the delivery of the components prescribed in this order including, but not limited to, all applicable laws regarding fundamental working conditions and human rights, slavery or human trafficking. The Supplier shall be obliged to indemnify HYDRO and hold them harmless from any liability which is created from the non-fulfilment of such laws and directives by the Supplier. The Supplier shall be obliged to obtain all required permits and licenses at its own expense.
- 14.2 The Supplier assures that it will supply or provide HYDRO with no "counterfeit goods" including, but not limited to, the components or materials or sub-components of components.
- 14.3 The violation of applicable laws with regards to fundamental working conditions and human rights – including the laws with regards to slavery and human trafficking which are applicable to the implementation of the Supplier's work in accordance with this order – shall be considered to be an essential violation of the provisions of this order which gives HYDRO the right to cancel the non-delivered parts of the affected order owing to an important reason. HYDRO's additional rights shall remain unaffected.

### **15. Final Provisions**

- 15.1 For the legal relationships of the Supplier to HYDRO, the law of the Federal Republic of Germany shall be valid subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 The exclusive legal venue for all disputes arising from the business relationship between HYDRO and the Supplier shall be HYDRO's commercial residence. HYDRO shall also be entitled to take legal action in the legal venue which is valid for the Supplier's commercial residence as well as in any other permissible legal venue.
- 15.3 The place of performance for all deliveries and services shall be the delivery destination that has been designated by HYDRO in the order.