



# GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

## MDG DYNAMIK GMBH

MDG GTC/GOODS (2021-1 STANDARD)

FOR: MDG DYNAMIK GMBH (MDG) Affiliates' purchases of tangible movable items (goods).

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. In this document

- 1.1.1. "MDG GTC/Goods": means the present MDG DYNAMIK GMBH General Terms and Conditions for Purchase of Goods (2021-1 Standard);
  - 1.1.2. "Affiliate": means any entity, whether incorporated or not, which presently or in the future, directly or indirectly owns, is owned by, or is under common ownership with, by virtue of a controlling interest of 50 % or more of the voting rights or the capital, a Party to the contractual relationship on which this MDG GTC/Goods is applicable;
  - 1.1.3. "Contract": means Supplier's agreement to deliver the Goods to Customer, and Customer's acceptance of such Delivery of Goods under this MDG GTC/Goods, the Order and the documents attached to the Order; "Customer": means the purchasing MDG Affiliate ordering Goods from Supplier;
  - 1.1.4. "Delivery": means delivery completion of Goods by Supplier in accordance with INCOTERMS 2020 FCA unless otherwise specified in the Order; "Embedded Software": means software necessary for operation of Goods and embedded in and delivered as integral part of Goods, however excluding any other software, which shall be subject to a separate licence agreement; "Goods": means the tangible movable items to be delivered by Supplier under this MDG GTC/Goods and the related Order;
  - 1.1.5. "Intellectual Property (Rights)": all proprietary rights in results created intellectually (by thought) and protected by law, including but not limited to patents, patent applications and related divisionals and continuations, utility models, industrial designs, trade names, trademarks, copyrights (regarding software source codes, documentation, data, reports, tapes and other copyrightable material) and respective applications, renewals, extensions, restorations, or proprietary rights in results created intellectually (by thought) which are protected by confidentiality, including but not limited to know-how and trade secrets;
  - 1.1.6. "IPR Indemnification": means reimbursement of Customer by Supplier for costs, claims, demands, liabilities, expenses, damages or losses (including without limitation to any direct, indirect, or consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of Supplier's third party Intellectual Property Right infringements; "Open Source Software (OSS)": means publicly available and accessible software which can be used, modified and further developed by everybody, however always in compliance with the relevant publicly available underlying licence terms and conditions;
  - 1.1.7. "Order": consists of Customer filling in the Order form with all required Customer purchasing information based upon this MDG GTC/Goods, and such respective documents, specifications, drawings and annexures expressly referred to in or attached by Customer to such Order;
  - 1.1.8. "Party": means either Customer or Supplier;
  - 1.1.9. "Supplier": means the seller of the Goods such as the person, firm or company who accepts Customer's Order;
  - 1.1.10. "Variation Order": means a change to the Order such as to alter, to amend, to omit, to add to, or otherwise to change the Order or any parts thereof.
- 1.2. Unless otherwise specified in the present MDG GTC/Goods:
- 1.2.1. References to clauses are to clauses of the MDG GTC/Goods;
  - 1.2.2. Headings to clauses are for convenience only and do not affect the interpretation of the MDG GTC/Goods;
  - 1.2.3. The use of the singular includes the plural and vice versa;
  - 1.2.4. The use of any gender includes all genders.

### 2. APPLICATION OF TERMS

- 2.1. Each Order requires acceptance by Supplier either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part.
- 2.2. The MDG GTC/Goods are the only terms and conditions upon which Customer is prepared to deal with Supplier for the provision of Goods, and it shall govern the Contract between Customer and Supplier to the exclusion of all other terms or conditions, except if and to the extent otherwise expressly agreed in writing between Customer and Supplier.
- 2.3. No terms or conditions endorsed upon, delivered with or contained in Supplier's quotations, acknowledgements or acceptances of Orders, specifications or similar documents will form part of the Contract, and Supplier waives any right which it otherwise might have to rely on such other terms or conditions.
- 2.4. The MDG GTC/Goods version effective at the date when the Order was placed, applies to the respective Order, and any amendment(s) to the MDG GTC/Goods shall have no effect unless expressly agreed in writing and signed by duly authorised representatives of Customer and Supplier.

### 3. SUPPLIER'S RESPONSIBILITIES

- 3.1. Supplier shall deliver the Goods as provided below:
  - 3.1.1. in accordance with the applicable laws and regulations;
  - 3.1.2. in accordance with the quality standards stated under Clause 9.1 and specified in the Order;
  - 3.1.3. free from defects in material and workmanship and from any rights of third parties;
  - 3.1.4. on the due date specified in the Order; and



- 3.1.5. in the quantity specified in the Order.
  - 3.2. Supplier shall not substitute or modify any of the materials in the Goods or make any changes to the design of the Goods without Customer's prior written approval.
  - 3.3. Supplier shall take care that the Goods are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the Goods until Delivery completion.
  - 3.4. Supplier shall submit invoices in an auditable form, complying with Supplier's and Customer's applicable local mandatory law, generally accepted accounting principles and the specific Customer requirements, containing the following minimum information: Supplier name, address and reference person including contact details (telephone, e-mail etc.); invoice date; invoice number; Order number (same as stated in the Order); Supplier number (same as stated in the Order); address of Customer; quantity; specification of Goods supplied; price (total amount invoiced); currency; tax or VAT amount; tax or VAT number; payment terms.
  - 3.5. Invoices shall be issued to Customer as stated in the Order and sent to the invoice address specified in the Order.
  - 3.6. Customer may issue Variation Orders to Supplier to alter, amend, omit, add to, or otherwise change ordered Goods or parts thereof. If Supplier agrees to such a Variation Order request, Supplier shall carry out such Variation Orders under the Order and/or MDG GTC/Goods. Agreed unit prices stated in the Order and/or otherwise agreed between Customer and Supplier shall apply.
  - 3.7. In no event Supplier shall suspend the Delivery of any Goods to Customer.
4. CUSTOMER'S RESPONSIBILITIES
    - 4.1. In consideration of the Goods delivered by Supplier in accordance with the terms and conditions of the respective Order and the MDG GTC/Goods, Customer shall pay to Supplier the purchase price stated in the Order provided the invoice fulfils the requirements of Clause 3.4.
    - 4.2. Customer reserves the right with notice to the Supplier to set off such amount owed to Supplier, or withhold payment for Goods not provided in accordance with the Order and the MDG GTC/Goods.
5. DELIVERY
    - 5.1. The Goods shall be delivered in accordance with INCOTERMS 2020 specified in the Order.
    - 5.2. Supplier shall ensure that each Delivery is accompanied by a delivery note, which shall contain the following minimum information (unless required otherwise by Customer): the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
    - 5.3. The Goods shall be delivered during Customer's business operation hours unless otherwise requested by Customer.
    - 5.4. Upon Delivery, Supplier (or its appointed carrier) shall provide Customer with such export documents as are necessary together with a delivery note.
    - 5.5. Ownership (title) of the Goods shall pass to Customer upon full payment. However, to the extent that the Goods contain Embedded Software, ownership (title) regarding such Embedded Software shall not be passed to Customer, however Customer and all users shall have a worldwide, irrevocable, perpetual, royalty-free right to use the Embedded Software as an integral part of such Goods or for servicing the Goods. In the event the Embedded Software or any part thereof is owned by a third party, Supplier shall be responsible for obtaining the respective software licenses necessary from the third party before Delivery to comply with its obligations under the Order.
    - 5.6. In the event the Embedded Software contains or uses Open-Source Software, Supplier must fully specify and inform Customer in writing and prior to Delivery about all Open-Source Software implemented into or used by the Embedded Software. In the event that Customer cannot approve any Open Source Software components contained in or used by the Embedded Software, Supplier agrees to replace or substitute the affected Open Source Software component(s) contained in or used by the Embedded Software.
    - 5.7. Supplier shall invoice Customer upon Delivery in accordance with Clause 3.4, but such invoicing shall be conducted separately from dispatch of the Goods to Customer.
6. ACCEPTANCE OF GOODS
    - 6.1. Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following Delivery or, in the case of a defect in the Goods, until a reasonable time after such defect has become apparent.
    - 6.2. If any Goods delivered to Customer do not comply with Clause 3 (Supplier's Responsibilities), or are otherwise not in conformity with the Order, then, without limiting any other right or remedy that Customer may have under Clause 10 (Remedies), Customer may reject the Goods and request repair or replacement of the Goods or recover all payments made to Supplier by Customer.
7. DELAYED DELIVERY
    - 7.1. If Delivery of the Goods does not comply with the agreed delivery date(s) then, without prejudice to any other rights which it may have, Customer reserves the right to:
      - 7.2. terminate the Contract in whole or in part;
      - 7.3. refuse any subsequent delivery of the Goods which Supplier attempts to make;
      - 7.4. recover from Supplier any expenditure reasonably incurred by Customer in obtaining the Goods in substitution from another supplier; claim damages for any additional costs, loss or expenses incurred by Customer which are reasonably attributable to Supplier's failure to deliver the Goods on the agreed delivery date; and
      - 7.5. claim additional compensation for liquidated damages if such compensation right is expressly stated in the respective Order.



## 8. INSPECTION OF GOODS

- 8.1. At any time prior to Delivery and during Supplier's business hours, Customer shall have the right at its cost to (i) inspect the Goods and Supplier's manufacturing units upon providing reasonable notice, and/or (ii) request test samples of the respective Goods, or any parts or materials thereof.
- 8.2. If the results of such inspection or test sampling cause Customer to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or with any agreed specifications and/or patterns supplied or advised by Customer to Supplier, Customer shall inform Supplier and Supplier shall immediately take such action as is necessary to ensure conformity with the Order. In addition Supplier shall carry out such necessary additional inspection or testing at Supplier's own cost whereby Customer shall be entitled to be present and in attendance.
- 8.3. Notwithstanding any inspection or test sampling by Customer, Supplier shall remain fully responsible for the Goods compliance with the Order. This applies whether or not Customer has exercised its right of inspection and/or testing and shall not limit Supplier's obligations under the Order. For the avoidance of doubt, inspection or testing of Goods by Customer shall in no event exempt Supplier from or limit Supplier's warranties or liability in any way.

## 9. WARRANTY

- 9.1. Supplier warrants that the Goods:
  - 9.1.1. comply with all agreed specifications, including all specified material, workmanship and the like, documentation and quality requirements, or in absence thereof are fit for the purposes for which goods of the same description type would ordinarily be used and keep the functionality and performance as expected by Customer according to Supplier's information, documentation and statements;
  - 9.1.2. are fit for any particular purpose expressly or impliedly made known to Supplier in the Order and/or Order related documents;
  - 9.1.3. are new and unused at the date of Delivery;
  - 9.1.4. are free from defects and rights of third parties;
  - 9.1.5. possess the qualities which Supplier has held out to Customer as a sample or model;
  - 9.1.6. comply with Clause 12 (Compliance with Relevant Law).
- 9.2. The warranty period shall be twenty four (24) months from Delivery, or such other time period stated in the Order or otherwise expressly agreed in the Contract.
- 9.3. In case of non-compliance with the warranty provided under this Clause, Customer shall be entitled to enforce the remedies provided in Clause 10 (Remedies) hereunder.

## 10. REMEDIES

- 10.1. In case of breach of warranty under Clause 9 (Warranty) or if Supplier otherwise fails to comply with any of the terms of the respective Order, Customer shall give notice in writing to Supplier of such breach of warranty and provide Supplier an opportunity to swiftly remedy it. If no Supplier action to remedy such breach has been taken within forty eight (48) hours of receiving such Customer notification, Customer shall be entitled to any one or more of the following remedies at its own discretion and at Supplier's own expense:
  - 10.1.1. to give Supplier another opportunity to carry out any additional work necessary to ensure that the terms and conditions of the Order are fulfilled;
  - 10.1.2. to carry out (or to instruct a third party to carry out) any additional work necessary to make the Goods comply with the Order;
  - 10.1.3. to obtain prompt replacement of the defective Goods by Goods conforming with the Order without defects;
  - 10.1.4. to refuse to accept any further Goods, but without exemption from Supplier's liability for the defective Goods delivered by Supplier;
  - 10.1.5. to claim such damages as may have been sustained by Customer as a result of Supplier's breaches of the respective Order;
  - 10.1.6. to terminate the Contract in accordance with Clause 15.2.
- 10.2. In the event that Clauses 10.1.1, 10.1.2 or 10.1.3 apply, the entire warranty period of Clause 9.2 shall be restarted.
- 10.3. The rights and remedies available to Customer and contained in the MDG GTC/Goods are cumulative and are not exclusive of any rights or remedies available at law or in equity.

## 11. INTELLECTUAL PROPERTY

- 11.1. In the event that the Goods (and/or the Embedded Software) delivered by Supplier infringe any third party Intellectual Property Rights, Supplier shall, notwithstanding anything provided to the contrary or otherwise contained in this MDG GTC/Goods, the Order, or the Contract, provide IPR Indemnification to Customer. The IPR Indemnification applies whether or not Supplier may have been negligent or at fault and does not limit any further compensation rights of Customer. Supplier's obligation to indemnify Customer as provided under this Clause shall not apply if and to the extent the liability or damage was caused by Customer's own pre-existing Intellectual Property Rights contributed to or implemented into the Goods provided by Supplier.
- 11.2. If any infringement claim is made against Customer, Customer may without prejudice to its rights under Clause 11.1 also request at its discretion
- 11.3. In the event Supplier cannot fulfil Customer's above request, Customer shall be entitled to terminate the Order, to reclaim all sums which Customer has paid to Supplier under the Order and to claim compensation in accordance with Clause 11.1 and for any other costs, losses or damages incurred whatsoever.

## 12. COMPLIANCE WITH RELEVANT LAW



- 12.1. The Goods covered by this MDG GTC/Goods shall be provided by Supplier in compliance with all relevant legislation, regulations, and codes of practice, guidance and other requirements of any relevant government or governmental agency applicable to Supplier. To the extent that such regulations are advisory rather than mandatory, the standard of compliance to be achieved by Supplier shall be in compliance with the generally accepted best practice of the relevant industry.
  - 12.2. Both Parties warrant that each will not, directly or indirectly, and that each has no knowledge that the other Party or any third parties will, directly or indirectly, make any payment, gift or other commitment to its customers, to government officials or to agents, directors and employees of each Party, or any other party in a manner contrary to applicable laws (including but not limited to the U. S. Foreign Corrupt Practices Act and, where applicable, legislation enacted by member states and signatories implementing the OECD (Convention Combating Bribery of Foreign Officials), and shall comply with all relevant laws, regulations, ordinances and rules regarding bribery and corruption. Nothing in this MDG GTC/Goods shall render either Party or any of its Affiliates liable to reimburse the other for any such consideration given or promised.
  - 12.3. Either Party's material violation of any of the obligations contained in this Clause 12 (Compliance with Relevant Law) may be considered by the other Party to be a material breach of the respective contractual relationship for the sale of Goods to which this MDG GTC/Goods applies, and shall entitle such Party to terminate such contractual relationship with immediate effect and without prejudice to any further right or remedies under such contractual relationship or applicable law.
  - 12.4. Supplier shall indemnify without any agreed limitations Customer for all liabilities, damages, costs, or expenses incurred as a result of any such violation of the obligations of Clause 12 and termination of the respective contractual relationship for the sale of Goods.
13. 13 CONFIDENTIALITY AND DATA PROTECTION
- 13.1. Supplier shall:
    - 13.1.1. Unless otherwise agreed in writing, keep in strict confidence all technical or commercial information, specifications, inventions, processes or initiatives of Customer which have been disclosed to Supplier by Customer or its agents and any other information concerning Customer's business or its products and/or its technologies, and which Supplier obtains in connection with the Goods (whether before or after acceptance of the Order). Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of the provision of the Goods to Customer. Supplier shall ensure that such employees, agents, sub-contractors or other third parties are subject to and comply with the same obligations of confidentiality as applicable to Supplier and shall be liable for any unauthorized disclosures;
    - 13.1.2. Apply reasonable safeguards against the unauthorised disclosure of Customer's confidential and proprietary information and protect confidential information in accordance with the generally accepted standards of protection in the related industry, or in the same manner and to the same degree that it protects its own confidential and proprietary information – whichever standard is the higher. Supplier may disclose confidential information to "Permitted Additional Recipients" (which means Supplier's authorised representatives, including auditors, counsels, consultants and advisors) provided always that such Permitted Additional Recipients sign with Supplier a confidentiality agreement with terminology substantially similar hereto or where applicable, are required to comply with codes of professional conduct ensuring confidentiality of such information;
    - 13.1.3. Take all necessary steps to ensure that Customer's data or information which come into its possession or control in the course of delivering the Goods are protected. In particular Supplier shall not (i) use Customer's data or information for any other purposes than for delivering the Goods, or (ii) reproduce the data or information in whole or in part in any form except as may be required by the respective contractual documents, or (iii) disclose Customer's data or information to any third party not authorised by Customer to receive it, except with the prior written consent of Customer;
    - 13.1.4. Install and update at its own costs required adequate virus protection software and operating system security patches for all computers and software utilized in connection with delivering the Goods and shall provide updates to Customer if so requested by Customer.
  - 13.2. Supplier agrees that Customer shall be allowed to provide any information received from Supplier to any other MDG Affiliate.
14. LIABILITY AND INDEMNITY
- 14.1. Without prejudice to applicable mandatory law or unless otherwise agreed between the Parties, Supplier shall compensate/indemnify Customer for all damages and losses in connection with the Goods whether or not Supplier may have been negligent or at fault (i) for Supplier's breaches of the terms of Contract, and (ii) for any claim, except for IPR Indemnification for which Clause 11 (Intellectual Property) applies, made by a third party (including employees of Supplier) against Customer in connection with the Goods and to the extent that the respective liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Supplier and/or its sub-contractors. Upon Customer's request Supplier shall defend Customer against any third party claims.
  - 14.2. Supplier shall be responsible for observance of all of its suppliers and/or sub-contractors, and it shall be responsible for the acts, defaults, negligence or obligations of any of its suppliers and/or sub-contractors, its agents, servants or workmen as fully as if they were the acts, de-faults, negligence or obligations of Supplier.
  - 14.3. The provisions of this Clause 14 (Liability and Indemnity) shall survive any performance, acceptance or payment pursuant to this MDG GTC/Goods and shall extend to any substituted or replacement Goods delivered by Supplier to Customer.
  - 14.4. Unless otherwise expressly stated in the respective Order, 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. Nothing contained in this Clause 14 (Liability and Indemnity) shall relieve Supplier from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

14.5. Customer reserves the right to set off any claims under the Order against any amounts owed to Supplier.

14.6. Supplier's total liability out of or in connection with the Contract or any Order shall in no case exceed 100'000.- Swiss Francs or 100 % of the respective Contract/Order Value, whichever is higher. Neither Party shall be liable for any indirect & consequential losses, such as but not limited to loss of use, loss of profit, loss of power, loss of contracts. This limitation of liability shall not apply in case of gross negligence and/or willful misconduct or non-compliance with mandatory law.

#### 15. TERM AND TERMINATION OF ORDERS

15.1. The respective contractual relationship established by an Order under this MDG GTC/Goods may be terminated for convenience in whole or in part by Customer upon giving Supplier thirty (30) calendar days written notice, unless otherwise expressly stated in the relevant Order. In such event Customer shall pay to Supplier the value of the already delivered but unpaid parts of the Goods and proven direct costs reasonably incurred by Supplier