

# General Terms and Conditions of Purchase (GTCP)



## § 1 Scope

- These General Terms and Conditions of Purchase (GTCP) are applicable to all kinds of procurements by
  - EDAG Engineering GmbH or
  - affiliated subsidiaries to a)hereafter referred to individually or jointly as "Principal" or „EDAG" on the one hand and its suppliers - hereinafter referred to as "Supplier" - on the other hand.
- These Terms and Conditions shall apply exclusively to the legal relationship between the Supplier and the Principal. Deviations, amendments and supplements must be made in writing, unless individual contractual agreements are made between the parties. Contradictory, supplementary or deviating conditions of the Supplier only become part of the contract if the Principal expressly acknowledges this in writing. The unopposed acceptance of deliveries and services as well as their payment and the silence of the Principal shall in no case constitute an acceptance of conditions of the Supplier. The Principal objects to any additional or contradictory or conflicting terms or conditions in offers, acceptance letters or order confirmations by the Supplier.
- These GTCP shall also apply to all future legal relationships between the Supplier and the Principal, even if no explicit reference is made to these Terms and Conditions of Purchase in individual cases, provided that this is a bilateral business-related transaction.
- These GTCP apply to all procurement processes, such as tools, machines, equipment, parts, raw materials, other material, software, work services of all kinds or services ("object of delivery or contract" or "delivery performance").
- To the extent that the contractual services are construction services, the statutory regulations shall apply exclusively to the exclusion of VOB / B (German Tendering and Contract Regulations for Construction Service).

## § 2 Offer / Order Placement

- The preparation of the offer is free of charge for the Principal.
- The Supplier shall expressly inform the Principal in the offer of any deviations from the inquiry documents.
- Supply contracts are only concluded when the Supplier has confirmed the Principal's order in writing or begins to perform on the basis of an order placed by the Principal.
- If the Supplier does not confirm the order within two weeks of receipt of the order and does not commence performance within this period, the Principal shall be entitled to revoke the order without the Supplier being entitled to claim damages as a result.

## § 3 Content / Modifications / Spare parts

- The content and scope of services shall result from the order and the other applicable documents specified in the order, as well as these GTCP. Ideas, drafts, models, samples and all other work results arising at the Supplier in the course of performance are part of the contract performance.
- The Supplier shall check all specifications, performance descriptions and other information provided to it for the execution of a delivery contract as well as any supplies, parts and other materials provided for the execution of the delivery contract with regard to their suitability for the purpose intended by the Principal and the end customer of the Principal. If it becomes apparent in this context that deviations or corrections are necessary or expedient on the items provided or the contractual objects, the Supplier must inform the Principal thereof without delay. The Principal shall then inform the Supplier in writing as to whether and, if so, which changes the Supplier is to make. If, in the view of the Supplier, such changes could lead to a change in the agreed costs of the contractual items or to agreed deadlines not being met, the Supplier shall inform the Principal thereof without delay. Appropriate arrangements must be made by mutual agreement regarding the effects, in particular with regard to additional or reduced costs as well as the agreed dates. If no agreement is reached within a reasonable period of time, the Principal shall decide at his reasonable discretion.
- The Supplier shall ensure that he is aware in good time of all information and circumstances relevant to the fulfillment of its contractual obligations and of the intended use of its deliveries by the Principal. The Supplier may only invoke the absence of necessary documents if it has requested the documents in good time in writing and has not received them within a reasonable period of time. The Supplier warrants that his deliveries include all services necessary for proper and safe use that they are suitable for the intended use and correspond to the current state of the art in science and technology.
- The Supplier complies with all relevant standards, laws and regulations under applicable law, in particular the relevant safety, environmental protection, hazardous substances, dangerous goods and accident prevention regulations, as well as the generally recognized safety regulations and the corresponding specifications of the Principal and the end customer.
- The Supplier warrants to comply with all obligations under the German Minimum Wage Act (MiLoG) and to impose the same obligations on sub-contractors employed by the Supplier or sub-contractors when executing the order within Germany. Upon first request, the Supplier undertakes to provide the Principal with suitable proof that the Supplier and the sub-contractors employed for the execution of the order fulfill the obligations they have assumed with regard to MiLoG.
- If Regulation (EC) No. 1907/2006 of December 18, 2006 ("REACH Regulation") applies to the Supplies, the Supplier warrants that the Supplies comply with the requirements of the REACH Regulation and all national provisions adopted in implementation of this Regulation ("REACH"). The Supplier guarantees compliance with all REACH obligations, including (pre-) registrations and the provision of REACH-compliant safety data sheets and IMDS data sheets. If delivery services are not provided in accordance with REACH, the Principal reserves the right to withdraw from framework or individual orders or to terminate them. The Supplier informs the Principal immediately of any changes affecting compliance with

## REACH.

The Supplier indemnifies the Principal from all claims of third parties due to non-compliance with REACH. Failure to comply with the requirements and obligations arising from REACH constitutes a defect triggering the warranty rights.

- The Supplier shall inform the Principal of the necessary official permits and reporting obligations for the import and operation of the delivery services. In particular, the Supplier is obliged to comply with the relevant export control regulations at the time of delivery. He must inform the Principal in writing of any export control marking of the contract items or parts thereof in accordance with applicable law at the time of delivery, in particular in accordance with the applicable EU- and US - regulations, at the latest at the time of delivery. For each subject matter of the contract affected by the export control, or parts thereof, the relevant export control list and list position shall be specified.
- The Supplier is responsible for compliance with all data protection regulations for the processing of the Principal's personal data and must ensure that these are observed in the performance of the contractual relationship with the Principal. The Supplier agrees to the processing and storage of data which have become known to the Principal within the framework of contractual relations and which are necessary for the execution of the contract. As far as this is absolutely necessary for the execution of the procurement process, the Principal is entitled to pass on information about the Supplier to contractual partners of the Principal.
- The Principal may demand changes to the delivery performance, in particular in design and execution, from the Supplier at any time before acceptance. The Supplier is obliged to implement the changes without delay on the basis of the present contract conditions. If, in the view of the Supplier, such changes could lead to a change in the agreed costs of the contractual items or to agreed deadlines not being met, the Supplier shall inform the Principal thereof without delay. Appropriate arrangements must be made by mutual agreement regarding the effects, in particular with regard to additional or reduced costs, as well as the agreed schedules. If no agreement is reached within a reasonable period of time, the Principal shall decide at his reasonable discretion. The Principal reserves the right to suspend the Supplier's services in whole or in part at any time.
- The Supplier is obliged to provide the agreed services and in particular the materials and personnel required for this free of charge for a period of six months for the Principal, unless the Principal is obliged towards his end customer to provide such services for a longer period. The Supplier shall inform the Principal in good time before the end of the suspension period of any significant changes to its services.
- The Supplier shall ensure that he can supply the Principal with further contractual objects or parts thereof as spare parts for a period of ten years, beginning after delivery of the contractual objects, unless, due to technical progress, a compatible, adequate replacement can be delivered, equally approved by the end customer of the Principal.

## § 4 Due Dates / Delays / Damages due to Delays

- Agreed dates and delivery periods are binding. The receipt of the defect-free delivery and/or service at the place of performance or the successful acceptance or other performance review, if such is agreed or provided for by law, shall be decisive for compliance with agreed deadlines and dates.
- The Supplier is obliged to immediately notify the Principal in writing of a recognizable delay in his performance, a foreseeable possible delay in his performance or recognizable or foreseeable possible problems with the delivery in the agreed quality. The Supplier can only refer to causes of a delay for which he is not responsible if he has fulfilled his obligation to notify the Principal.
- A notification of delays by the Supplier and any updates of agreed delivery dates connected therewith shall not release the Supplier from the consequences of default, unless the waiver of consequences of default is expressly declared in writing by the Principal when the deadline is changed. In this respect, the Principal shall continue to be entitled to all rights from the supply contract resulting from or in connection with the Supplier's delay despite the updating of the delivery dates after notification of delays by the Supplier.
- In the event of default on the part of the Supplier, the Principal shall be entitled to claim liquidated damages from the Supplier without setting a further grace period. This amounts to 0.5% of the total order value for each commenced week of delay, up to a maximum of 10% of the total order value. The Supplier is entitled to prove that a lower loss has been incurred. The liquidated damages shall be set off against any actual and asserted damage caused by default. The right to demand payment of liquidated damages is not forfeited by unconditional acceptance of the delayed delivery. The Principal may claim liquidated damages until the contractual objects have been paid in full. The assertion of additional claims by the Principal remains unaffected.

## § 5 Force Majeure

- Force majeure, in particular intellectual disputes, unrest, official measures and other unforeseeable, unavoidable and serious events shall mutually cause the performance obligation of the contracting parties to be suspended for the duration of the disruption. The contracting parties are obliged to provide the necessary information without delay and to adjust their obligations to the changed circumstances in good faith within the bounds of reasonableness.
- In the event that the performance obligations are suspended for a period of more than two weeks due to force majeure, the Principal shall be entitled to terminate the contractual relationship with immediate effect. In this case, the Supplier may demand reimbursement of his verified and documented incurred expenses, which he has incurred in confidence in the existence of the contractual relationship until the contractual obligations have been suspended.

## § 6 Prices / Delivery- and Payment Conditions / Assignment of Claims / set-off / Right of Retention

1. The agreed prices are fixed prices. If hourly rates are included in the quotation, they only serve the purpose of cost transparency. Anything to the contrary shall only apply if it has been expressly agreed in writing, that invoicing shall be based exclusively on units on the basis of negotiated hourly rates.
2. The prices are inclusive of all expenses of the Supplier, e.g. costs for materials, use of facilities, travel costs, transport, insurance, packaging, customs duties, taxes, fees, etc.
3. If a payment plan has been agreed, payments shall be made after receipt of a corresponding partial invoice in accordance with the dates and partial amounts agreed in the payment plan. Prior to acceptance of the overall performance by the Principal, all payments shall be made as partial advance payments without recognition of the previous performance as completion. Invoicing of the final installment shall in any case only take place after complete delivery and, where stipulated by contract or law, after acceptance of the overall delivery. The Principal is entitled to withhold the final instalment, or a maximum of 10% of the order value, until the expiry of the warranty period. The Supplier is entitled to redeem such a retention by providing a directly enforceable guarantee (on first demand, waiving the plea of an advance action) of a bank or a credit insurer.
4. Invoices are to be sent to the Principal stating the order number, order code and numbers of each individual order item. Electronic invoicing is only permitted with the express written consent of the Principal. The invoice must further contain all information permitting to deduct VAT, in particular the tax number or VAT identification number and other mandatory information of an invoice in accordance with the relevant statutory provisions of the applicable law. If the invoice does not contain the aforementioned data, the Principal is not obliged to pay the stated value added tax. If the Principal is denied VAT deduction due to an improper invoice, the Supplier repays the VAT paid by the Principal.
5. Payment shall be made within 14 working days with a 3% discount or within 90 calendar days net by means of payment at the discretion of the Principal. Payment deadlines will be initiated with the later of the following options: (a.) delivery or acceptance of the service, (b.) receipt of the invoice or (c.) the delivery date stated in the order.
6. Unless otherwise agreed in the individual order, deliveries shall be made "Delivery Duty Paid" ("DDP") (according to Incoterms 2010).
7. The Supplier is not entitled to assign his claims to third parties or have them collected by third parties in individual cases without the written consent of the Principal. If the Supplier assigns his claims against the Principal to a third party without the Supplier's written consent, the provisions of § 354a HGB (German Commercial Code) shall apply. However, the Principal may, at his discretion, either pay to the Supplier or the third party with discharging effect.
8. Payments by the Principal shall be deemed to have been made as soon as they are instructed to be paid by the Principal.
9. The Principal is entitled to set-off, also against such claims to which his affiliated companies are entitled against the Supplier, as well as against claims to which the Supplier is entitled against an affiliated company of the Principal.
10. In the event of defective delivery, the Principal is entitled to withhold payment pro rata until proper performance.

## § 7 Use of Equipment / Tools / Release Request

1. Designs, samples, means of production, models, data carriers, prototypes, illustrations, drawings, documentation, materials, equipment, components, parts, containers, packaging, tools, measuring instruments, devices, samples or other items, including those on a lending basis, provided by the Principal to the Supplier as intended by the Principal (hereinafter "provisions") shall not become the property of the Supplier, but shall remain the property of the Principal, unless expressly agreed otherwise in writing.
2. Materials provided shall be checked and examined by the Supplier immediately; any complaints shall be notified to the Principal in writing without undue delay. The Supplier may only use the materials provided in the course of order processing for the Principal and may not use them for other purposes or allow others to use them without the prior written consent of the Principal.
3. Supplies must be clearly marked as the property of the Principal and kept safe and separate from other objects free of charge for the Principal with the care of a prudent businessman. The Supplier shall handle the materials provided carefully and appropriately, maintain them in good condition at his own expense, replace them if necessary and indemnify the Principal against any claims, costs and damage resulting from or in connection with the installation, use, storage or repair of the materials provided. The Supplier shall bear the risk for the materials provided, as long as they are in his custody or under his control. The Supplier is obliged to insure the supplies at his own expense against all insurable risks (all risk) in the amount of the replacement value. The Supplier hereby assigns his claims against the insurance to the Principal in advance. The Principal hereby accepts this assignment.
4. The Principal or a third party designated by the Principal is entitled at any time to enter the Supplier's premises during normal business hours and to check the supplies and the relevant records.
5. The Principal may demand the surrender of the materials provided at any time and without special reason. At such a request of the Principal, the Supplier must immediately surrender the materials provided, prepare them for dispatch or deliver them to the Principal against payment of the appropriate transport costs. The assertion of rights of retention or liens by the Supplier is excluded.
6. In the case of processing, the Principal shall become the owner of the new or transformed object upon processing. The Supplier shall store the new or transformed item free of charge for the Principal with the care of a prudent businessman.

7. Ownership of auxiliary models, tools, models, molds, etc. produced by the Supplier (hereinafter referred to as "tools") shall not be transferred to third parties. Tools, which are required for the provision of the contractual service, shall pass to the Principal upon creation. In all other respects, the provisions for materials provided shall apply accordingly. The Principal has the right to demand the return of the tools at any time at his own discretion, provided that the costs verifiable incurred in the production of the tools have already been reimbursed at the time of the demand for return or the costs have already been compensated within the scope of the previous order remuneration or in the agreed material price. Even without agreement of the manufacturing costs to be reimbursed according to this regulation, the Supplier is obliged to return the goods immediately. A right of retention is excluded. The Principal has the right to have the tools destroyed by and at the expense of the Supplier after the end of the order. The destruction of tools requires the written consent of the Principal.

## § 8 Sub-Contracting

The subcontracting of orders to third parties is only permitted with the prior written consent of the Principal. In the event that the Supplier violates this provision, the Principal shall be entitled to terminate the contract with immediate effect (good cause for termination) and to assert further statutory rights.

## § 9 Incoming goods inspection / acceptance / transfer of risk / transfer of ownership / retention of title

1. The Supplier shall ensure that the delivery is free of defects by applying the care customary in the industry. The Principal thus limits his incoming goods inspection to identity and quantity (comparison of delivery note with packaging details) as well as the external condition (in particular obvious transport damage). For delivery services for which it is not possible to determine any defects in this way, the right to give notice of defects is reserved until complete processing of the delivery in the proper course of the Principal's business. In this respect, the Supplier waives the objection of delay pursuant to § 377 HGB (German Commercial Code) and the legal consequences of § 377 section 2 and section 3 HGB.
2. If acceptance is required according to the type of delivery, the underlying law or on the basis of contractual agreement, the delivery shall be deemed to have been accepted upon written declaration of acceptance by the Principal. If the Principal does not fulfil his obligation to take part in an acceptance test after written notification of readiness for acceptance and request for declaration of acceptance by the Supplier, the delivery performance shall be deemed to have been accepted four (4) weeks after taking into use and written notification of readiness for acceptance and request for declaration of acceptance by the Supplier, provided that the Principal does not name any defects to the Supplier during this period and refuses acceptance on the basis of this.
3. If the delivery performance of the Supplier is integrated into an overall performance of the Principal towards his end customer, acceptance of the service of the Supplier shall only take place upon acceptance of the Principal's overall performance by the end customer, without the need for an explicit explanation. Payments shall in no case imply acceptance of the delivery item.
4. Unless otherwise agreed in writing in an individual contract, the risk shall pass upon acceptance of the delivery service, unless acceptance is required under the above provision, otherwise upon complete delivery of the delivery service.
5. If the Supplier himself provides the delivery service, the Principal becomes the owner of the delivery service upon its creation, otherwise upon delivery to the Principal.
6. Any retention of title with regard to delivery services by the Supplier to the Principal is excluded, unless the Principal expressly agrees to a retention of title in a separate agreement in writing.

## § 10 Non-Disclosure

1. The Supplier keeps all non-obvious, commercial and technical details, which become known to him through the business relationship, strictly confidential and protects them against unauthorized inspection, loss or use. This also applies in particular to materials provided (collectively referred to hereinafter as "Information"). Information may not be made available or made available to unauthorized third parties without the written consent of the Principal. This obligation does not apply to Information (a) which is or becomes generally known without breach of this obligation, (b) which is disclosed to the Supplier by a third party without breach of a corresponding obligation or (c) of which the Supplier can prove that he already possessed it before this obligation came into force or developed it independently thereafter.
2. The reproduction of such Information is only permitted within the framework of operational requirements and copyright regulations. After completion of the work, the Information provided to the Supplier is to be handed over to the Principal without being requested to do so, observing the confidentiality regulations, or it is to be securely destroyed in consultation with the Principal. The Supplier shall not retain or retain any copies, duplicates, etc., unless he is obliged by law or by specifications to archive electronic data using an electronic backup system. Subject to further rights, the Principal may demand their surrender as soon as the Supplier violates his obligations.
3. Employees and sub-contractors are to be obligated accordingly.
4. Unless otherwise agreed in the order, this confidentiality obligation shall continue five (5) years after acceptance of the delivery and/or performance.
5. The Supplier may only advertise the business relationship with the prior written consent of the Principal.

## § 11 Warranties

1. The Supplier guarantees that all his delivery services  
(a) comply with the contractually agreed specifications;

- (b) are free of design, manufacturing and material defects;
  - (c) correspond to the state of the art in science and technology at the time of acceptance;
  - (d) comply with the statutory, official, industry-specific standards and requirements applicable to them at the time of acceptance, in particular safety, environmental protection, building authority, hazardous materials, dangerous goods and accident prevention regulations as well as the quality assurance requirements of the Principal and the end customer;
  - (e) are suitable for the contractually agreed use or use recognizable to the Supplier.
2. If delivery does not meet the aforementioned requirements, the Principal may, at his discretion, request the Supplier to remedy the defect or replace it with defect-free delivery at his own risk. In the event that the Supplier does not comply with this obligation within a reasonable period of time, refuses to remedy the defect or provide compensation or special circumstances exist which require immediate action, the Principal may - after informing the Supplier - remedy the defects himself at the Supplier's expense or provide defect-free compensation or have the defect remedied by third parties or the delivery service replaced.
  3. Furthermore, the Supplier shall reimburse the Principal for all costs (including transport, handling, installation / removal, material and labor costs) incurred in connection with the removal of defects or the replacement of defective delivery services.
  4. The warranty period is 36 months from delivery to (purchase contract) or acceptance by (work performance) the Principal. If the delivery is part of an overall performance to be delivered by the Principal to his end customer, the warranty period shall be 36 months from acceptance of the overall performance by the client of the Principal, but no longer than 48 months from acceptance by the Principal.
  5. If a defect occurs within the first 12 months after the beginning of the warranty period, it is assumed that this already existed at the time of the transfer of risk or acceptance, unless the Supplier proves that the occurring defect was culpably caused by the Principal.
  6. Further legal or contractual claims remain unaffected.

## § 12 Liability for infringement of 3rd party rights

1. The Supplier agrees to ensure through appropriate research with due diligence customary in the industry that the rights of third parties are not infringed by the work to be performed and its results.
2. Should the intended design of the work results or their implementation infringe the rights of third parties, the Supplier shall immediately inform the Principal thereof and make every effort to find a technical solution which does not make use of the intellectual property rights concerned or examine whether action can be taken against the intellectual property rights concerned with a view to success. If the intellectual property rights of third parties cannot be circumvented, the Principal will decide whether the intellectual property rights concerned should be used under a license. The Principal and Supplier will agree on the distribution of the costs incurred in each individual case.
3. Provided that the Supplier does not inform the Principal about conflicting rights of third parties, which are known to him or which should have been recognized by him in compliance with the care customary in the industry, the Supplier releases the Principal from any claims of third parties, which are based on conflicting rights to the work results, parts thereof and/or their use.

## § 13 Other Liability / Insurance

1. The Supplier is liable for claims arising from the infringement of granted and applied for intellectual property rights and copyright infringements when the goods and services are used in accordance with the contract. The Supplier indemnifies the Principal and his customers from all claims arising from the infringement of such property rights. This does not apply if the Supplier works according to drawings, models, data etc. provided by the Principal and does not know or, in connection with services provided by him, does not need to know that property rights are infringed as a result. In the event of an infringement, the Principal is entitled to obtain the necessary approval for delivery, commissioning, use, resale, etc. of the delivery item from the owner of such property rights at the Supplier's expense. Any further claims for damages on the part of the Principal shall remain unaffected.
2. The Supplier indemnifies the Principal from claims of third parties arising from product liability if and to the extent that he is responsible for the product defect and the damage incurred, and reimburses the Principal in this respect for any expenses arising from or in connection with a recall campaign or service measures carried out by the Principal or one of his customers. The Principal shall inform the Supplier of the content and scope of the recall or service measures - as far as possible and reasonable - and give him the opportunity to comment. The principles of § 254 BGB (German Civil Code) shall apply accordingly for the compensation of damages between the Principal and the Supplier.
3. The Supplier indemnifies the Principal upon first written request against all claims and rights of third parties of any kind resulting from an alleged breach of the obligations under the minimum wage law by the Supplier or a subcontractor appointed by the Supplier.
4. Should services of the Supplier also include work on the premises of the Principal or one of his customers, the Supplier takes all necessary precautions to avoid personal injury or damage to property during the course of this work. The Supplier indemnifies the Principal and releases the Principal from all damages, costs and expenses caused by the Supplier's work on a company site, unless the Supplier is not at fault.
5. The Supplier is liable for his representatives, vicarious agents or subcontractors to the same extent as for his own actions.
6. The Supplier commits himself to take out and ensure an adequate insurance protection customary in the industry, especially with regard to personal injury, prop-

erty damage and financial loss, both in terms of reason and amount. Upon request, the Supplier shall provide the Principal with appropriate insurance confirmations. The Supplier hereby assigns all payment claims against the insurers and against the injuring party in connection with the contractual objects to the Principal in advance, as far as legally possible, and the Principal accepts this assignment. The liability of the Supplier is not limited by the conclusion of the insurance policies and the assignment of the insurance claims.

7. Further legal or contractual rights remain unaffected.

## § 14 Rights in and to work results

1. Supplier shall immediately inform the Principal of all innovations arising in connection with the performance of the contractual work ("Foreground") and submit all documents required for the evaluation of these innovations. This Foreground includes in particular inventions, technical improvement suggestions, know-how, intellectual creations including computer programs as well as any other individual intellectual performances.
2. Supplier shall remain owner of all industrial property rights, copyrights and know-how which, demonstrably, was held by Supplier prior to the commencement of the contractual work or arises after the commencement of the contractual work independently thereof ("Background"). If Background is included in or incorporated into the work results, or insofar as Background is necessary for the exploitation of the work results by the Principal, Supplier grants the Principal a non-exclusive, temporally and territorially unrestricted, transferable, sub-licensable right to use such Background insofar as this is necessary for the exploitation of the work results (this includes, in particular, the production, manufacture, repair as well as distribution both loose and as a component of products). Supplier accepts and acknowledges that such granting of rights is compensated by the total remuneration agreed for the main contractual performance. If Background is included in or incorporated into the work result, Supplier shall immediately inform the Principal and list the corresponding rights.
3. All work results - as a whole and parts thereof - as well as documents, samples and other findings, etc. created in connection with the contractual work shall be the sole property of the Principal; to the extent possible, the Principal shall acquire ownership thereof. The Principal acquires the exclusive, unrestricted, sub-licensable and irrevocable use and exploitation right to all Foreground from the time of its respective creation. Supplier accepts and acknowledges that this assignment is compensated by the total remuneration agreed for the contractual performance.
4. Insofar as Foreground - as well as Supplier's contract-related achievements and work results - is fully or partially protected by copyright, in particular if such Foreground is a computer program, Supplier hereby irrevocably grants the Principal the exclusive, sub-licensable, geographically and temporally and in terms content unrestricted, right to use and exploit regarding all present and future types of use and exploitation, including all purposes connected with Principal's business (comprising product or company branding as well as advertising purposes). Supplier accepts and acknowledges that this grant of rights is compensated by the total remuneration agreed for the contractual performance. This right extends to all types of use and includes in particular reproduction, distribution, public reproduction, making available to the public, revision, modification, transfer to third parties against payment or free of charge as well as registration for and use as an industrial property right (in particular as a trademark or design). As far as the right of use concerns computer programs, it also extends to the right of decompilation if this is necessary in order to create interoperability of the software with other programs or to eliminate errors in the software. Furthermore, Supplier waives the right to affix a copyright marking regarding the Foreground; this shall also be deemed to have been compensated with the total remuneration.
5. The Principal is solely entitled to file applications for industrial property rights concerning the Foreground as well as concerning Supplier's contract-related achievements and work results. Supplier accepts and acknowledges that this entitlement is compensated by the total remuneration agreed for the contractual performance. The right to file applications for industrial property rights also includes the right to refrain from such applications without herewith establishing a right of the Supplier to file such application. The Principal may grant Supplier the right to file such applications in individual cases on the basis of a separate agreement; in such event, the Principal shall in any case be entitled to a non-exclusive, sub-licensable, geographically and temporally and in terms content unrestricted right to use which is deemed to have been compensated with the total remuneration.
6. Supplier shall, at its own expense, support such applications and submit all declarations necessary for obtaining and defending industrial property rights.
7. Subject to other statutory provisions, Supplier shall be solely responsible for the remuneration of his employees.
8. The Principal is entitled to transfer and/or license all or part of his rights under this Section 14 to third parties as well as to authorize third parties to transfer and sublicense these rights on their part.
9. In the case of subcontracting, it is the sole responsibility of the Supplier to ensure that the Principal obtains the same rights in and to work results as if Supplier had executed the work itself. In addition, the Supplier shall ensure that all authors likewise waive their right of copyright marking.

## § 15 Termination

### Termination without Cause

1. The Principal may terminate the order at any time without notice and without giving reasons; the termination may relate to the entire order or to part of the order. Such an ordinary termination must be made in writing.
2. In the event of ordinary termination, the Principal shall pay the total remuneration pro rata in accordance with the services which the Supplier has demonstrably rendered up to the time of the termination taking effect. In the event of a partial termination, however, the corresponding payment shall not become due before the agreed payment date for the service rendered.

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3. Beyond the provision of Section 15.2, the Principal shall reimburse the Supplier in the event of a total or partial termination those costs which were demonstrably incurred by him on account of and for the direct purpose of the execution of the terminated scope of the contract with due commercial care and which could not have been avoided to the extent possible and reasonable.
4. Further claims of the Supplier in the event of ordinary termination, on whatever legal grounds, do not exist. In any case, the total amount of payments to be made by the Principal pursuant to this Section 15 shall not exceed the total remuneration.
5. If, in the event of proper termination, an order is agreed between the Principal or one of his affiliated companies on the one hand and the Supplier on the other, for which the free capacities of the Supplier can be used, the above payments shall be taken into account in accordance with Section 15.3.

## Termination for Good Cause

6. The parties may terminate the contract extraordinarily for good cause without observing a period of notice. In particular, the breach of a contractual obligation incumbent on the Supplier, which the Supplier does not completely fulfil within a reasonable period of time specified by the Principal, shall be regarded as an important reason. A good cause also exists in the case of an application for the opening of insolvency proceedings or the rejection of insolvency proceedings for lack of assets over the assets of the Supplier or if a significant deterioration occurs or threatens to occur in the financial circumstances of the Supplier, which could endanger compliance with the contractual obligations, in particular the delivery obligations, or in the case of culpable and not only insignificant breach of the obligations under the MiLoG by the Supplier or by a subcontractor appointed by this or a subcontractor.
7. In the event of an extraordinary termination for which the Supplier is responsible, the Principal shall only replace the demonstrably provided defect-free services up to the date of termination in proportion to the actual value of the provided service to the value of the total service owed. No further claims of the Supplier, on whatever legal grounds, shall exist. In any case, the total amount of payments to be made by the Principal pursuant to this Section 15 shall not exceed the total remuneration.
8. The assertion of further claims by the Principal in the event of extraordinary termination by the Principal remains reserved.

## Withdrawal

9. If the Principal makes use of a contractual or statutory right of withdrawal, the declaration of withdrawal must be made in writing.
10. In such a case, the Principal is entitled to pay compensation instead of restitution or surrender of the services received so far. The amount of the compensation depends on the value of the service rendered at the time of the declaration of withdrawal.

## **§ 16 Inspection**

1. The Supplier grants the Principal access to its business premises during normal business hours after notification and to provide insight into all documents in connection with an order, so that the Principal can check the correctness of the services of the Supplier and the correctness of all invoice items.
2. These documents shall remain available for such review for a period of ten (10) years after termination of the contract, but at least in accordance with the statutory provisions.
3. If the Supplier employs subcontractors, he shall ensure that they grant the Principal corresponding rights.

## **§ 17 Miscellaneous**

1. The place of performance for the services and deliveries from the respective individual order is the headquarter or the registered office of the ordering branch of the Principal, unless another place of performance is specified in the individual contract.
2. Should one or more provisions or should an essential part of the order or these General Terms and Conditions of Purchase be or become wholly or partially void or should the order or these General Terms and Conditions of Purchase be incomplete, the validity of the remaining provisions of the order and these General Terms and Conditions of Purchase shall not be affected thereby. The void parts shall be replaced by a provision which corresponds to the sense and purpose of the void parts or comes closest to them. Other gaps are to be filled in at equitable discretion.
3. Exclusive place of jurisdiction for all disputes arising from or in connection with an order is - insofar as legally permissible and both parties are merchants - the locally competent court at the Principal's registered office. However, the Principal is also entitled to assert his claims against the Supplier at the general place of jurisdiction of the Supplier.
4. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) and the conflict rules of international private law. In addition to the General Terms and Conditions of Purchase, the Code of Conduct for Suppliers and Business Partners of EDAG Engineering GmbH (Supplier Code of Conduct) in its currently valid version shall apply. This can be viewed on the web page [www.edag.de](http://www.edag.de) and can be downloaded there.