

## **Terms and Conditions of Purchase** (as of September 2016)

### **1. Scope of application**

- 1.1. The present Terms and Conditions of Purchase shall apply exclusively to business transactions with tectos GmbH, Gradnerstrasse 145, 8054 Graz, Austria, commercial register number FN 343784s (hereinafter also referred to as “tectos”).
- 1.2. By accepting the order, the Contractual Partner (hereinafter also referred to as “Supplier”) acknowledges the applicability of the following Terms and Conditions of Purchase to all deliveries and services to be provided to tectos and waives the enforcement of any deviating terms and conditions of sale and delivery of their own. The present Terms and Conditions of Purchase shall apply to all current and future business transactions with the Contractual Partner, even if no express reference is made to them.
- 1.3. The Supplier’s terms and conditions of sale and delivery as well as any other regulations deviating from these Terms and Conditions of Purchase shall only become integral part of the contract if confirmed in writing by tectos.

### **2. Offer and conclusion of contract**

- 2.1. Unless otherwise specified by tectos, offers made by the Supplier shall be binding for at least 3 months.
- 2.2. Purchase orders placed by tectos as well as any modifications and amendments shall only be legally binding if they are set out in writing and duly signed. The written form requirement shall also be deemed met if the purchase order is placed by fax or e-mail.
- 2.3. The preparation of offers submitted to tectos shall be free of charge, irrespective of the required preliminary work.
- 2.4. tectos reserves the right to withdraw from the contract against payment of a cancellation fee in the amount of 20% of the price, excluding VAT, without stating reasons. Should the actual loss occurred be lower, only such lower amount shall be compensated.

### **3. Confidentiality**

- 3.1. The Supplier hereby irrevocably undertakes to keep strictly confidential all trade and business secrets that are made available or provided to them by tectos or that otherwise become known to them in connection or on the basis of a business relationship with tectos, and not to disclose them to third parties in any manner without tectos’ consent.

- 3.2. Drawings, sketches, tools and other production aids that are enclosed with the purchase orders and/or made by the Supplier on behalf of tectos shall be the property of tectos and may only be used for orders placed by tectos. The Supplier shall maintain and keep confidential the copyrights, patent rights and other proprietary rights of tectos and all know-how of tectos that is available to them.
- 3.3. Any documents and materials provided to the Supplier shall be returned to tectos without being asked after the order is completed, unless the Supplier keeps them in order to complete further orders on the basis of separate agreements.
- 3.4. The Supplier shall pass on the information received in the manner described above on a “need to know” basis only and use it only within the framework of the related contract.
- 3.5. This confidentiality obligation shall remain valid for 3 years after the termination of the business relationship with tectos and, irrespective of any business relationship, for 3 years after tectos has obtained the related offer.
- 3.6. Every time the Supplier violates the obligations stated in item 3.1, the Supplier shall pay a penalty in the amount of **EUR 10,000.00**. tectos’ right to claim further damages as well as injunctive relief shall remain unaffected.
- 3.7. tectos shall be entitled to offset the penalty against sums owed by tectos to the Supplier.
- 3.8. Any advertisement and publications about orders of tectos as well as the inclusion of tectos in the business partner’s reference list shall be subject to tectos’ prior written consent.

#### **4. Additional works and services**

##### **4.1. Intellectual property rights for individual software**

- 4.1.1. For software developed individually for tectos, the Contractual Partner shall transfer to tectos all transferrable proprietary and other exploitation rights to the works and services performed for all exploitation opportunities that are known at the time or become known later upon their accrual exclusively and without separate remuneration.
- 4.1.2. The Contractual Partner shall transfer to tectos the right to use the works or services; such right shall be unlimited as regards time, territory and type of use. This shall also apply after the contractual relationship has ended for whatever reason, and shall include, in particular, the right to process, modify and pass such rights on to third parties.

- 4.1.3. When subcontracting any orders to third parties, the Contractual Partner shall make sure that tectos acquires exclusively the aforementioned rights, particularly the right to use the works or services performed by such third party.
- 4.1.4. The Contractual Partner explicitly waives to be stated as author of the software.
- 4.1.5. The Contractual Partner shall furthermore provide tectos free of charge with the source code of the individual software developed for tectos and the related documents as well as all passwords and/or access codes that may be required for accessing the source code and/or the documentation.

## **4.2. Intellectual property rights for standard software**

- 4.2.1. tectos shall be free to use the number of the acquired standard software licences without limitation as regards time and territory and without any further restrictions.
- 4.2.2. For any customising services and the related additional developments prepared outside the standard software, the Contractual Partner shall also provide tectos free of charge with the source code plus documentation as well as all required access codes and/or passwords.
- 4.2.3. If the Contractual Partner participates in the development of other intellectual property rights, such as trademarks, models and/or patents, it shall be agreed that such rights shall also be transferred and/or provided to tectos free of charge and that the Contractual Partner shall waive their use and/or exploitation in whatever form, including through third parties. The same shall apply to know-how.

## **4.3. Qualification, documentation, training**

- 4.3.1. The Contractual Partner shall only use carefully selected and well-trained staff. The Contractual Partner shall disclose the name and function of the responsible staff members in writing. Upon tectos' request, the Contractual Partner shall replace any staff members as soon as possible who do not have the required expert knowledge or adversely affect the execution of the contract.
- 4.3.2. The Contractual Partner shall provide tectos with a complete copyable documentation for operation (e.g. manual). tectos shall be entitled to copy and use the documentation for any use under the contract.
- 4.3.3. The Contractual Partner shall provide a free initial training to tectos' staff to the extent of at least 15 hours.

#### **4.4. Declaration of compliance**

- 4.4.1. If the Contractual Partner takes part in a nationwide packaging disposal system in Austria (such as the ARA = Altstoff Recycling Austria AG), the following legally binding declaration shall be included in the offer and also in every delivery note and every invoice: "The packaging of all stated goods is compliant according to licence number xxxx." Additional fees or costs, such as deposits and disposal costs, shall not be recognised by tectos.
- 4.4.2. If the Contractual Partner fails to issue such a declaration of compliance, they shall collect or take back the packaging material. If the Contractual Partner fails to meet this obligation, tectos shall be entitled to have the packaging material disposed of by third parties at the cost and risk of the Contractual Partner.

#### **5. Prices and terms of payment**

- 5.1. All deliveries and services performed by the Supplier for tectos shall be remunerated at fixed prices, excluding VAT. The agreed fixed price shall include all costs required to properly execute the contract, such as packaging, transport, unloading, insurance, installation and documentation costs as well as costs for the first instruction and any licence fees. Furthermore, the agreed fixed price shall include public fees and duties as well as any social security contributions and out-of-pocket expenses.
- 5.2. The prices shall apply free place of set-up and/or use and/or place of posting (INCOTERMS 2010 - "DDP").
- 5.3. The tectos order number shall be stated in all documents, particularly in invoices. Invoices where the order number is not stated shall be returned without being processed and shall, in case of doubt, be regarded as not received. In this case, invoices shall be deemed not submitted until a new invoice is received.
- 5.4. The invoice shall be sent to tectos no later than 10 days after the delivery or service has been completed. It shall not be enclosed with the shipment. If the handover of the deliveries and services of the Contractual Partner has been agreed, they shall be entitled to issue the invoice after successful handover.
- 5.5. tectos shall not make any advance payments.
- 5.6. Unless otherwise expressly agreed, the term of payment shall be 60 days from the receipt of invoice and/or any other document triggering the term of payment.

- 5.7. If payment is made within 14 days from invoice receipt, tectos shall be entitled to a 3% cash discount. If payment is made within 30 days, the cash discount shall be 2%. If the invoice is paid within 60 days, the full invoice amount shall be due.
- 5.8. The bank transfer date shall be decisive for the timely payment; tectos' place of performance shall be Graz.

## **6. Place of performance and handover**

- 6.1. Place of performance for deliveries shall be the place stated by tectos in the purchase order or tectos' registered office.
- 6.2. Unless otherwise agreed, the Contractual Partner shall bear the costs and the risk of transport until handover behind the first locked door at the tectos site and/or at the agreed place of delivery.
- 6.3. The risk of loss or damage shall only be transferred to tectos upon handover.
- 6.4. The Contractual Partner shall take out transport insurance for the goods and pack them properly. Any damage occurring due to improper packaging and prior to acceptance by tectos shall be borne by the Contractual Partner.
- 6.5. The Supplier shall add a delivery note including the purchase order details to every shipment.

## **7. Acceptance and partial delivery**

- 7.1. Deliveries shall be non divisible and complete.
- 7.2. After the training, delivery and installation has been completed and/or upon the successful performance of all required installation tests for goods, hardware and software components and after the written notification of readiness for acceptance by the Contractual Partner and if the complete documentation is available, tectos shall carry out an acceptance test. Unless otherwise agreed, an acceptance date shall be set within four weeks as from the notification of completion by the Contractual Partner.
- 7.3. The operational use of the goods, hardware and software prior to the performance of the formal acceptance shall not replace such formal acceptance and shall not constitute any conclusive declaration of acceptance. After the acceptance test has been successfully performed and after it has been confirmed by tectos in the form of a written declaration of acceptance signed on behalf of the company, the goods, hardware and software shall be deemed accepted (hereinafter referred to as "acceptance").

7.4. If maintenance services are rendered prior to acceptance and/or if a maintenance contract is concluded, the obligation to pay remuneration shall start at the day of acceptance by tectos.

## **8. Delivery deadlines and default**

8.1. The Supplier shall meet the agreed delivery dates. If it is foreseeable for the Supplier that there will be delays, they shall notify tectos immediately. Such notification shall not release the Supplier from the penalty set out below.

8.2. In case of delay in delivery attributable to the Supplier, tectos shall furthermore be entitled to withdraw from the contract with immediate effect after the expiry of 14 days from the occurrence of the delay, without tectos being obliged to set a grace period. If a fixed date has been agreed, the contract shall be deemed cancelled when such fixed date is exceeded, unless tectos requests the fulfilment of the contract within 14 days from the missed date.

8.3. In the event of default, where possible, tectos shall also be entitled to accept partial deliveries and also to withdraw from the contract.

8.4. If the Supplier is in default, tectos shall be entitled to charge a penalty (price reduction) in the general amount of 1 percent of the net order sum, but no more than 10 percent of the net order sum, per commenced week. This shall also apply if the Supplier performs a partial delivery and/or partial service after the agreed deadline and this is accepted by tectos.

8.5. tectos shall also be entitled to claim payment of a penalty in the amount of 10% of the net order sum in case of withdrawal from the contract attributable to the Supplier.

8.6. tectos shall be entitled to refuse the acceptance of COD shipments.

8.7. tectos shall remain entitled to claim further damages. tectos shall be entitled to offset the damage caused by delay and/or the penalty against claims of the Supplier.

8.8. The acceptance of late deliveries by tectos shall not exclude the enforcement of claims for damages due to delay in delivery.

8.9. The extra costs accruing due to the non-compliance with agreed shipping terms or due to accelerated shipment in case of delay in delivery shall be borne by the Supplier.

## 9. Warranty

- 9.1. The goods shall be accepted by tectos subject to inspection with regard to quality, properties and quantity. Any obligation to notify defects according to § 377 UGB [Austrian Business Code] of tectos shall be excluded.
- 9.2. The Supplier shall assume full warranty for 24 months for all deliveries and services. The Supplier shall eliminate any defects identified during this period at their cost immediately upon request.
- 9.3. All costs related to the identification and elimination of defects, also if they are incurred by tectos, such as examination costs, transport, disassembly and (further) installation costs shall be borne by the Supplier.
- 9.4. The warranty period shall be suspended for the duration of improvement works up to the successful elimination of defects. Any parts exchanged or repaired in line with the warranty shall again be subject to a warranty period of 24 months from exchange and/or repair.
- 9.5. tectos shall choose the place of performance for the elimination of defects in line with the warranty obligation. Any further statutory provisions shall remain unaffected.
- 9.6. If the defect is not visible at the time of acceptance, the warranty period shall only start at the time the defect is identified.
- 9.7. In case of warranty, tectos shall be entitled to determine the type of warranty; they may decide between improvement, replacement, price reduction and rescission.
- 9.8. Exclusions and limitations of liability of the Contractual Partner, particularly based on the title of warranty or damages, shall not be accepted.
- 9.9. If the Supplier is in delay with the fulfilment of warranty obligations or in other urgent cases, tectos shall be entitled to eliminate the defects themselves or have them eliminated and/or to order replacement deliveries from third parties at the Supplier's cost.
- 9.10. If defective goods are returned, the Supplier shall bear the related costs and risk.
- 9.11. The Supplier shall be liable, irrespective of fault, for all losses incurred by tectos and/or customers of tectos due to defective goods delivered by the Supplier. The Supplier shall be liable without limitation according to the statutory provisions.



**10. Spare parts, means of production and primary materials**

- 10.1. The Supplier shall prepare spare parts lists jointly with tectos for the implemented projects that include the prices and delivery times of spare parts. The Supplier shall guarantee the availability of the spare parts included in such lists for a period of 10 years from delivery. Should a spare part no longer be available during such period, the Supplier shall deliver a technical replacement whose delivery time must not be longer than the originally agreed delivery time for the affected spare part.
- 10.2. Means of production provided by tectos to the Supplier shall be handled with care and stored for 10 years from the last production date and be at tectos' disposal. They shall be returned to tectos immediately upon request.
- 10.3. Means of production manufactured or procured by the Supplier for which tectos has paid the manufacturing costs (tool costs) shall become the property of tectos as from that time. Item 10.2. shall then also apply to such means of production manufactured by the Supplier at tectos' cost. If the Supplier is not able to keep such means of production at tectos' disposal for 10 years in a ready-to-use state, they shall be obliged to notify tectos in writing and to return the means of production to tectos upon request.
- 10.4. If any primary materials (semi-finished products, castings, pre-processed parts, etc.) provided by tectos are damaged or lost, their replacement costs shall be reimbursed to tectos by the Supplier.

**11. Reservation of ownership**

All deliveries to tectos shall be made free from proprietary rights and reservations rights. If the order confirmation or the invoice still includes such reservations, they shall be ignored. Express objection shall not be required.

**12. No assignment**

The Supplier shall not be entitled to assign any claims against tectos to third parties.

**13. Contracts for works and services**

- 13.1. This item includes additional conditions for the performance of works and services under contracts for works and services ("work") by the Supplier.
- 13.2. The Supplier shall perform the work until the agreed date. The contract shall be deemed fulfilled if the entire work has been accepted by tectos in writing.



- 13.3. When producing the work, the Supplier shall use essentially their own work equipment. The Supplier shall not be bound to any working hours, any place of work and any instructions of tectos. The Supplier shall be aware that this engagement does not constitute employment.
- 13.4. The Supplier shall not be obliged to perform the relevant works and services personally.
- 13.5. The Supplier shall be solely responsible for the taxation of the remuneration and the payment of the social security contributions. They assure tectos that all requirements are met for the performance of the work (social security and commercial law) and that they will submit relevant proof to tectos upon request, where required. Furthermore, the Supplier undertakes to indemnify tectos and hold them harmless from and against any disadvantages arising from the non-fulfilment of these obligations.

## **14. Termination and withdrawal from the contract**

### **14.1. Termination**

- 14.1.1. In the event of continuous obligations, tectos may terminate the contract with a 30 days' period of notice with effect from the end of the month, and the Contractual Partner may terminate the contract with a 90 days' period of notice with effect from the end of the month.
- 14.1.2. Any waiver of termination on part of tectos shall be subject to the express written confirmation by tectos.
- 14.1.3. tectos may terminate the contract at any time without notice for just cause. Just cause implies compelling reasons, in particular, the reasons stated in item 14.2. or the death of the Contractual Partner, their liquidation (if they are a legal entity) or any execution proceedings conducted with regard to the Contractual Partner's property.

### **14.2. Withdrawal from the contract**

- 14.2.1. tectos shall be entitled to withdraw from the contract for just cause, in particular, if
- a. the Contractual Partner violates any official regulations or provisions of these General Terms and Conditions of Purchase, particularly items 11 and 16.6;

- b. the Contractual Partner has taken measures, particularly if they have made agreements with other companies that are disadvantageous for tectos, violate moral standards or are anti-competitive practices;
  - c. the Contractual Partner has, directly or indirectly, promised or paid benefits and/or threatened or caused disadvantages to staff members of tectos who are dealing with the conclusion or execution of the contract.
- 14.3. If any of the reasons stated in items 14.1 or 14.2 apply, tectos shall be entitled to withdraw from the contract with regard to the entire, not yet fulfilled contract or only with regard to individual parts of the contract.
- 14.4. If reasons entitling tectos to withdraw from the contract apply, tectos shall also be entitled to substitute performance at the risk and cost of the Contractual Partner after a one-off written request to the Contractual Partner and by setting a grace period of 14 days (from the date stamp when posting) to the Contractual Partner; however, in case of imminent danger immediately without any further notification. All costs and losses accrued due to any substitute performance shall be borne by the Contractual Partner.

## **15. Export data**

- 15.1. The Supplier shall inform tectos about any goods-related limitations applicable to the (re-) exports of the delivered goods (merchandise, technology, software) according to Austrian, European and US-American export and customs regulations as well as the export and customs regulations of the goods' country of origin. For this purpose, the Supplier shall at least state the following information in their offers and order confirmations with regard to the individual items:
- the number of the EU Common Military List and the list of Dual Use Goods;
  - for US-American goods, the ECCN (Export Control Classification Number) according to the US Export Administration Regulation (EAR);
  - for US-American defence goods (so-called ITAR goods), the USML (United States Munitions List) category;
  - Details on the non-preferential origin of their goods (merchandise, technology, software) and their parts;
  - Details on the goods manufactured on the basis of controlled US technology and/or that include controlled US components.
- 15.2. The Supplier shall furthermore inform the purchaser stated in the purchase order about all further export data in writing upon request and to inform them about all changes to the above data in writing without being asked.
- 15.3. The legally binding acceptance of re-export restrictions (e.g. relating to existing/issued export permits and re-export restrictions contained therein or on the basis of license exceptions claimed according to EAR) shall be limited

to such goods for which, in the Supplier's opinion, an export permit is required (for the USA, the respectively valid version of the EAR shall apply), which are also identified accordingly in the delivery papers and about which the Supplier expressly informed us in offers and order confirmations.

- 15.4. Suppliers resident in the EU shall send us within one calendar week after the relevant request the original of the (long-term and/or) supplier declaration for goods with preferential origin status according to the Commission Implementing Regulation (EU) 2015/2447 as amended. If the Supplier fails to meet this obligation or if their declaration does not comply with the statutory provisions, they shall indemnify tectos and hold them harmless from and against any resulting disadvantages.

## **16. Final provisions**

- 16.1. Austrian substantive law excluding its rules regarding conflict of law and excluding the United Nations Convention on Contracts for the International Sale of Goods shall apply exclusively.
- 16.2. Place of jurisdiction for all disputes arising from contracts, including disputes on the existence or non-existence of a contract with the Supplier, shall be the competent court in Graz. Furthermore, tectos shall be entitled to enforce their claims before any other competent court.
- 16.3. Should any provision of these Terms and Conditions of Purchase be or become invalid, or should this contract wording include a gap, the contractual parties shall replace or complete the invalid or incomplete provision with appropriate provisions that come as close as possible to the economic purpose of the intended regulation. The validity of the remaining provisions shall remain unaffected.
- 16.4. The German original version of these Terms and Conditions of Purchase shall apply; other versions shall be provided for convenience only.
- 16.5. Any modifications or amendments to the contract shall be made in writing. This shall also apply to the modification of this written form requirement.
- 16.6. The offset of counter-claims of the Supplier of whatever nature against the claims of tectos shall be excluded.
- 16.7. Placed orders shall not be subcontracted to subcontractors in whole or in part without tectos' consent.