

# General Terms and Conditions of Purchase - FlexLink Systems GmbH (GTCP),

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## 1. Definitions

"Buyer" refers to the legal entity  
FlexLink Systems GmbH  
Schumannstraße 155, 63069 Offenbach

"Products" refers to the Seller's products as specified in the Purchase Order.

"Seller" refers to the company that sends a Sales Proposal to the Buyer.

"Services" refers to the Seller's services as specified in the Purchase Order.

"Parties" refers to both the Buyer and the Seller.

## 2. Scope of Application, Formal requirements

2.1 These General Terms and Conditions of Purchase (GTCP) apply to all business relationships of the Buyer with its business partners and suppliers ("Sellers"). The GTCP only apply if the seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

2.2 The GTCP apply in particular to contracts for the sale, manufacturing and / or delivery of goods ("goods"), regardless of whether the seller manufactures the goods himself or buys them from suppliers (§§ 433, 650 BGB) and to contracts for the provision of services. Unless otherwise agreed, the GPC shall apply in the version valid at the time of the order of the buyer or at least in the version communicated to him in text form as a framework agreement for similar future contracts, without having the buyer to refer to them again in each individual case.

2.3 These GTCP apply exclusively. Divergent, conflicting or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and insofar the Buyer has expressly agreed to their validity in writing. This approval requirement applies in any case, even the Buyer accepts the deliveries without reservation in knowledge of the general terms and conditions of the seller.

2.4 In individual cases, individual agreements with the seller (including side letter/agreements, additions and changes) have priority over these GTCP. For the content of such agreements, unless agreed otherwise, a written contract or written confirmation of the Buyer is required and shall prevail.

2.5 Declarations of legal relevance and announcements of the seller in relation to the contract (e.g. setting of deadlines, reminder, cancellation) must be submitted in writing, ie in writing or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further proof, especially in case of doubt about the legitimacy of the declarant, remain unaffected.

2.6 References to the validity of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded in these GPC.

## 3. Conclusion of contract

3.1 The order of the Buyer is binding at the earliest with delivery/confirmation of the order in written form. In case of obvious errors (e.g. typing and miscalculation) and incompleteness of the order, including the order documents, the seller must advise the Buyer for the purpose of correction or

completion before acceptance; otherwise the contract is considered not closed.

3.2 The seller is obliged to confirm the binding order in writing within a period of 3 working days (at the seat of the seller) or by fulfilling the order by sending the goods within this period without any reserve (acceptance). A later acceptance is considered a new offer and requires the Buyer's acceptance.

## 4. Delivery time and delivery delay

4.1 The delivery time specified by the Buyer in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 4 weeks from the conclusion of the contract. The seller is obliged to inform the Buyer immediately in writing, if he is not able to comply with agreed delivery times - for whatever reason.

4.2 If the seller does not accomplish the order or does not do so within the agreed delivery time or if he is in default, the Buyer's rights - in particular to cancellation and compensation for damages - are subject to the statutory provisions. The regulations in point 4.3 remain unaffected.

4.3 If the seller is in default, the Buyer may demand - in addition to further legal claims - a flat-rate compensation of the default damage in the amount of 0,2 % per working day (at the seat of the buyer) in default of the net price of the respective order per completed calendar week (maximum 1% per week), but no more than 5% of the net price of the delayed delivered goods and services. The Buyer remains entitled to proof and claim for damages exceeding this amount. The seller reserves the right to prove that no or only a considerably lesser damage has occurred.

## 5. Performance, delivery, risk of ownership, default of acceptance

5.1 The seller is not entitled, without prior written consent of the Buyer, to have his obligations performed by third parties (e.g. subcontractors). The seller bears the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock).

5.2 The Seller agrees to deliver Products and/or perform Services in a previously agreed location, subject to the terms and conditions of delivery and/or performance as specified in the Purchase Order. If the place of delivery/performance is not specified and nothing else has been agreed, the delivery shall be made to the place of business of the buyer. The respective place of destination is also the place of performance for the delivery/services and any subsequent performance (delivery debt).

5.3 The delivery has to be accompanied by a delivery note stating the date (issue and shipping), content of the delivery (item number and number) and the order code (date and number) of the Buyer. If the delivery note is missing or incomplete, the Buyer is not responsible for the resulting delays in processing and payment. Additionally to the delivery note, the Seller has to provide the Buyer a corresponding shipping notice meeting the same requirements.

5.4 The Seller acknowledges and agrees that the risk of loss and damage of the Products will be transferred to the Buyer in accordance with the INCOTERMS as specified in the Purchase Order. In case of the

absence of such specification in the Purchase Order or otherwise, the risk of accidental loss and damage of the goods passes to the Buyer at the place of performance on delivery. Insofar as a formal acceptance has been agreed, this shall be decisive for the transfer of risk. In the event of acceptance of delivery, the statutory provisions on contracts for work and services law apply additionally and accordingly. For the purpose of this provision, a default of acceptance shall have the same effect like acceptance.

- 5.5 In the event of default of acceptance of the Buyer, the statutory provisions apply. However, the seller must also expressly offer his services to the Buyer if a specific or determinable calendar time has been agreed for an action or participation of the Buyer (eg provision of material). If the Buyer is in default of acceptance, the seller may demand compensation of his additional expenditure in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a specific item to be individually produced by the seller (one-off production), the seller has further rights only the Buyer is committed to cooperation and is reliable for the failure to cooperate.

## 6. Prices and terms of payment

- 6.1 The price stated in the order is binding. In case of doubt and in the absence contradictory circumstances, all prices include statutory VAT, unless stated otherwise in the respective offer of the seller.

Unless agreed otherwise in individual cases, the price includes all services and ancillary services of the seller (e.g. installation, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

- 6.2 Unless agreed otherwise, the following conditions under 6.3 apply:
- 6.3 The agreed price is due for payment within 90 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If the Buyer makes payment within 14 calendar days, the seller grants the Buyer 3% discount on the net amount of the invoice. In the case of bank transfer, the payment has been made on time if the transfer order of the Buyer is received by our bank before the end of the payment period; the Buyer is not responsible for delays by the banks involved in the payment transaction.
- 6.4 The Buyer does not owe any maturity interest. The statutory provisions apply to default of payment.
- 6.5 The Buyer is entitled to the rights of set-off and retention as well as to the objection of the non-fulfilled contract according to the statutory law. In particular, the Buyer is entitled to withhold payments due as long and to the extent as the Buyer still has claims from incomplete or defective services against the seller.
- 6.6 The seller has a right of set-off or retention only on the basis of legally established or undisputed counterclaims.

## 7. Confidentiality, Retention of title

- 7.1 Each Party may disclose technical and/or commercial information about products, services, market forecasts, or information and materials that include or relate to Intellectual Property Rights to the other Party. Such information, whether communicated orally, in writing, electronically or through other means of communication, irrespective of whether identified as "secret", "classified" or "confidential", shall be considered confidential information.

- 7.2 Each Party agrees to: a) maintain strictly confidential any confidential information received by the other Party; b) only use confidential information received from the other Party for the purposes of the Contract; c) not disclose or communicate in any way the confidential information received from the other Party to third parties.

- 7.3 The Buyer reserves its the rights of ownership and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and to be returned to the Buyer after completion of the contract. The documents must be kept confidential and secret to third parties, even after termination of the contract. The obligation to confidentiality only expires if and insofar as the knowledge contained in the provided documents has become publicly known.

- 7.4 The provisions above shall apply accordingly to materials and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that the Buyer provides the seller for manufacturing. Such items shall be kept separately at the expense of the seller and adequately insured against destruction and loss unless they are processed.

- 7.5 Any processing of provided items by the seller is made for and on behalf of the Buyer. The same applies to further processing of the delivered goods by the Buyer, so that the Buyer is considered to be the manufacturer and acquires ownership of the product at the latest with further processing in accordance with the statutory provisions.

- 7.6 The transfer of the goods to the Buyer must be unconditionally and without consideration of the payment of the price. If, however, in individual cases the Buyer accepts an offer of the seller for transfer of ownership under the condition of the purchase price payment, the retention of title of the seller expires at the latest upon payment of the purchase price for the delivered goods. The Buyer remains authorized to resell the goods prior to payment of the purchase price in the ordinary course of business under the condition of prior assigning the resulting claims to the seller.

## 8. Intellectual Property Rights, Indemnity on IP

- 8.1 The Parties expressly acknowledge and agree that: (a) all Intellectual Property Rights held by the other Party (or licensed to the latter) are and remain the exclusive property of that Party (or its licensors); (b) each Party shall not acquire, through the Contract, any rights to the Intellectual Property Rights of the other Party (or its licensors).

- 8.2 In the event that any Seller's Intellectual Property Rights are embedded into Products and/or Services, the Seller licenses to the Buyer such Intellectual Property Rights so that the Buyer has the right to (a) use the Products and/or market the Products to their Customers, and/or (b) use the Services. This license is non-exclusive, free, perpetual, irrevocable, and without territorial limits.

- 8.3 For the purposes of this GTCP, the term "Intellectual Property Rights" refers to any industrial and intellectual property right relating to: (a) patents; (b) trademarks; (c) Internet domain names; (d) design; (e) software and firmware; and (f) industrial secrets, technical or commercial information and know-how.

- 8.4 The Seller agrees to ensure the Buyer that the purchase, possession, use and/or marketing of the Products and/or Services does not infringe Intellectual Property Rights of third parties.

- 8.5 In the event that the purchase, possession, use and/or marketing of the Seller's Products and/or Services violates the Intellectual Property Rights of

third parties, the Seller agrees to dispose of and indemnify the Buyer for any damages, costs, expenses, financial penalties or economic loss of any kind.

## 9. Defective Delivery

- 9.1 For the Buyer's rights in case of material and legal defects of the goods (including wrong and short delivery as well as improper installation, faulty assembly instructions or operating instructions) and other breaches of duty by the seller, the statutory provisions apply, unless stated otherwise below.
- 9.2 In accordance with the statutory provisions, the seller is liable in particular for ensuring that the goods have the agreed condition and quality upon delivery. In any case, any product descriptions which are the subject of the respective contract or are included in the contract in the same way as these GTCs, in particular by designation or reference in the order, are deemed to be an agreement on the condition, regardless whether the product description derives from the Buyer, the seller or the manufacturer.
- 9.3 Deviating from § 442 Abs. 1 S. 2 BGB, the Buyer is fully entitled to claims for defects, even if the defect at the conclusion of the contract remained unknown to the Buyer due to gross negligence.
- 9.4 The statutory provisions on our commercial duty to inspect and to give notice of defects (§§ 377, 381 HGB) apply with the following proviso:  
The obligation of the Buyer to inspect deliveries is limited to defects which openly become apparent during our incoming goods inspection under simple visual inspection including the delivery documents (eg transport damage, incorrect or short delivery) or in quality controls of the Buyer by spot checks. Insofar as acceptance has been agreed, there is no obligation to investigate.  
Otherwise, it depends on the extent to which an investigation is feasible in the ordinary course of business under the given circumstances of the individual case.  
The duty of the Buyer to give notice of defects which are discovered later remains unaffected.  
Irrespective of the Buyer's obligation to inspect the goods, the complaint (notice of defect) of the Buyer shall in any case be deemed prompt and timely if it is sent within 7 working days (at the seat of the Buyer) from discovery or, in the case of obvious defects, from delivery.
- 9.5 Supplementary Performance also includes the removal of defective goods and reinstallation, provided that the goods have been installed in accordance with their nature and intended use or attached to another object; our statutory claim for compensation for corresponding expenses remains unaffected.  
The seller also bears the expenses necessary for the purpose of testing and supplementary performance if turns out that there was actually no defect.  
The liability of the Buyer for damages in case of unjustified removal of defects remains unaffected; however, the Buyer is liable only if the Buyer has recognized or grossly negligent did not recognize that there was no defect.
- 9.6 Regardless the statutory rights and the provisions of 9.5, the following regulation applies:  
If the seller does not fulfill his obligation to supplementary performance - at the discretion of the Buyer by rectification of the defect (rectification) or by delivery of a defect-free item (replacement) - within a reasonable period set by the Buyer, the Buyer is entitled to remedy the defect itself and demand the necessary expenses or a corresponding advance from the seller. If the supplementary performance by the seller has failed or is

unreasonable for the Buyer (eg because of special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline is required; the Buyer will however inform the seller immediately about such circumstances, if possible beforehand.

- 9.7 Additionally, the Buyer is entitled to reduce the purchase price or to cancel the contract in case of material or legal defects according to the statutory provisions. In addition, the Buyer is entitled to damages and reimbursement of expenses according to the legal regulations.

## 10. Supplier recourse

- 10.1 The Buyer is entitled to recourse claims within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) according to the statutory provisions in addition to the claims for defects without limitation. In particular, the Buyer is entitled to demand exactly the type of supplementary performance (repair or replacement) from the seller, to which the Buyer is obliged to its customers in individual cases. The Buyer's legal right to choose (§ 439 Abs. 1 BGB) remains unaffected.
- 10.2 Before the Buyer acknowledges or fulfills a claim of its customer (including reimbursement of expenses according to §§ 445a Abs. 1, 439 Abs. 2 and 3 BGB), the Buyer will inform the seller and ask for a written statement with a brief statement of the facts. If a substantiated statement is not made within a reasonable period of time and if no mutually agreement is found, the deficiency claim actually granted by the Buyer to its customer shall be deemed to be valid and due. The seller remains entitled to prove the contrary.
- 10.3 The claims of the Buyer arising from supplier recourse also apply if the defective goods have been processed further by the Buyer or another contractor, e.g. by incorporation into another product.

## 11. Producer liability

- 11.1 If the seller is responsible for a product damage, he has to indemnify the Buyer in this respect from claims of third parties, insofar as the cause is set in his sphere and he is externally himself.
- 11.2 As part of his indemnity obligation, the seller has to indemnify the Buyer from expenses acc. to §§ 683, 670 BGB, which result from or arise in connection with a third-party claim including recalls carried out by the Buyer. The Buyer will inform the seller - as far as possible and reasonable - about the content and extent of recall measures and give him the opportunity to comment. Further legal claims remain unaffected

## 12. Force Majeure

- 12.1 No Party shall be held liable to the other Party as a result of default or delay in the performance of any of the obligations deriving from the Contract if such default or delay in performance is caused by events outside of the reasonable control of that Party, including, but not limited to: a) natural disasters; b) floods, fires, earthquakes or explosions; c) war (whether declared or not), insurrections, attacks, threats or terrorist acts, public disorder; d) measures or activities carried out by administrative authorities; g) national or local emergencies.
- 12.2 The Party affected by a Force Majeure Event agrees to give written notice to the other Party and to take any reasonable effort to remedy the failure or delay and to minimize the effects of the Force Majeure on its own ability to execute the Contract.

### **13. Insurance**

- 13.1 The Seller agrees to carry and maintain, at its own expense, adequate commercial general liability insurance (including any civil liability arising from the product) with financially sound and reputable insurance companies and a maximum coverage of no less than 10 (ten) million Euros.
- 13.2 The Seller agrees to give the Buyer, upon simple request, an insurance certificate specifying the details of insurance coverage as well as appropriate documentation proving the regular payment of the relevant insurance premiums.

### **14. Corporate Administrative Liability, Code of Conduct**

- 14.1 The Seller shall adhere to the highest standards of business ethics and undertakes to comply with the provisions set forth in the Coesia group's Code of Conduct available on [www.coesia.com](http://www.coesia.com) as well as the UN Global Compact's ten principles in the areas of human rights, labor, the environment and anti-corruption. The Seller shall require the same standard of conduct from all of its sub-contractors. In particular, without limiting the generality of the aforesaid, the Seller agrees not to use child labor. In the absence of any national or local law, the Seller and the Buyer agree to define "child" as an individual younger than 15 years. If local law sets the minimum age below 15 years of age, but is in accordance with the age limits of the International Labor Organization, the lower age will apply.
- 14.2 The Seller shall make all reasonable efforts to comply with any code of conduct or similar policy statement provided by the Buyer from time to time.
- 14.3 Violation of the aforesaid will constitute a material breach of contract. The Seller will indemnify the Buyer for any penalties or damages to be due to the latter as a result of the violation of the aforementioned provisions by the Seller or any of its collaborators. If the Seller, or any of its employees, violates the aforesaid provisions, the Buyer will have the right to terminate this Contract with prior written notice to be delivered by registered letter or certified electronic mail. The termination shall be effective immediately starting from the date of receipt of the above notice.

### **15. Limitation**

- 15.1 The reciprocal claims of the contracting parties expire in accordance with the statutory provisions, unless otherwise specified below.
- 15.2 Deviant from § 438 para. 1 no. 3 BGB, the general limitation period for claims for defects is 3 years from the passing of risk. Insofar as an acceptance has been agreed, the statute of limitations begins with the acceptance.  
Accordingly, the 3-year limitation period shall also apply to claims arising from defects in title, whereby the statutory limitation period for claims in rem for third parties (section 438 (1) no. 1 BGB) remains unaffected;  
In addition, claims arising from defects of title shall under no circumstances be statute-barred as long as the third party is still able to assert the right against the Buyer, especially in the absence of limitation.
- 15.3 The limitation periods of the law on sales contracts including the above extension apply - to the legal extent - for all contractual claims for defects. Insofar as the Buyer is entitled to non-contractual claims for damages due to a defect, the statutory limitation period applies (§§ 195, 199 BGB), insofar as the application of the statutory law on sales contracts does not lead to a longer limitation period.

### **16. Indemnification from costs**

- 16.1 Insofar as the seller is obliged to indemnify the buyer from the costs of legal prosecution arising out of and in connection with the contractual relationship between the parties, costs shall be reimbursed in accordance with a remuneration agreement based on a customary and reasonable hourly fee rate of a specialized and supra regional operating law firm in Germany.
- 16.2 In case of doubt, hourly rates of up to € 250.00 net are in any case reasonable costs of appropriate legal prosecution within the meaning of clause 16.1.
- 16.3 Insofar as the statutory fees (RVG) result in higher costs in individual cases than in accordance with §§ 16.1, 16.2, notwithstanding 16.1, these higher costs are to be reimbursed as appropriate costs for legal prosecution. The same applies insofar as a claim for reimbursement in accordance with sections 16.1 and 16.2 does not exist.
- 16.4 The obligation to reimburse other expenses and travel costs remains unaffected.

### **17. General Provisions, Language version**

- 17.1 The Seller shall comply all licenses, permissions, authorizations and approvals required to fulfill its obligations under the Contract.
- 17.2 The Seller and Buyer are independent parties and their agreement does not involve any agency, collaboration, partnership, employment or fiduciary relationship between the Parties. No Party has the right, authority or power to act in the name of and/or on behalf of the other Party, nor to limit the other Party or to provide obligations on behalf of the other Party to third parties.
- 17.3 Any modification to the Contract will only be valid if made in writing and signed by authorized representatives of both Parties.
- 17.4 Any waiver of the rights by a Party deriving from the Contract shall only be valid if made in writing and signed by that Party.
- 17.5 In no event shall the Seller assign the Contract, even partially, without the prior written consent of the Buyer.
- 17.6 Only the German language version is decisive for the interpretation and application of this AEB. The additional English translation is for convenience only.

### **18. Choice of law, jurisdiction, arbitration**

- 18.1 For this GTCP and the contractual relationship between the Buyer and the seller, the law of the Federal Republic of Germany applies under exclusion of international unity law, in particular the UN Sales Convention.
- 18.2 If the seller is a merchant ("Kaufmann") within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the seat of the Buyer.  
The same applies if the seller is entrepreneur ("Unternehmer") within the meaning of § 14 BGB. However, in all cases, the Buyer is entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a priority individual agreement or at the general place of jurisdiction of the seller. Mandatory statutory provisions, especially on exclusive jurisdictions remain unaffected.