

MBDA Deutschland GmbH
General Purchasing Terms and ConditionsDated: 01.06.2016
Version 17**1 Scope**

1.1 The following General Purchasing Terms and Conditions of MBDA Deutschland GmbH apply to all goods and/or services purchased or acquired by MBDA Deutschland GmbH from the Supplier.

1.2 Any general terms and conditions of the Supplier deviating from or supplementing these General Purchasing Terms and Conditions are non-binding for MBDA Deutschland GmbH, even if MBDA Deutschland GmbH does not object to them explicitly, if the Supplier states that he wishes to deliver only according to his general terms and conditions, or if these are included in his declaration of acceptance in accordance with section 2.1 or in the delivery note. Acceptance or payment of deliveries and services also do not constitute agreement.

2 Conclusion of contract

2.1 If the Supplier does not accept the purchase order from MBDA Deutschland GmbH by written declaration within two weeks upon receipt, MBDA Deutschland GmbH is entitled to cancel the purchase order. The receipt of the acceptance by MBDA Deutschland GmbH shall be decisive for the observation of the deadline.

2.2 The acceptance of the purchase order shall contain all essential order data, particularly the exact description of the ordered delivery items, the price, the order number and the order and delivery date.

2.3 Amendments or changes of purchase orders require the written confirmation of MBDA Deutschland GmbH.

2.4 The Supplier is not authorized to contract out the purchase order neither entirely nor partly without prior written consent of MBDA Deutschland GmbH. The unauthorized contracting out entitles MBDA Deutschland GmbH to withdraw from the contract in whole or in part and to claim damages.

3 Prices

3.1 Deliveries are made DAP Schrobenshausen (INCOTERMS® 2010), unless agreed otherwise.

3.2 Customs duty and insurance expenses for the goods, cargo insurance in particular, will not be paid by MBDA Deutschland GmbH. MBDA Deutschland GmbH will pay duty on all

deliveries itself. The Supplier shall deliver all goods duty unpaid.

3.3 The agreed prices are fixed prices and exclude subsequent claims or price increases of any kind.

4 Terms of payment

4.1 Invoices of the Supplier are to be submitted in duplicate and have to contain all data requested in the purchase order for each delivery. Electronic invoices will only be accepted in pdf-format.

4.2 MBDA Deutschland GmbH will effect payments – unless agreed otherwise – by bank transfer with 3% discount within 14 days after delivery or acceptance and receipt of the invoice or without discount within 30 days. Also, in the case of a set-off or of justified use of retention rights because of defects the deduction of the discount is permitted. Payment is subject to invoice verification.

4.3 The Supplier is neither entitled to assign any claim nor to have it collected by a third party without the written consent of MBDA Deutschland GmbH, which may not be withheld unreasonably. This does not apply in the case of extended retention of ownership as well as in respect to assignments to companies in which MBDA Deutschland GmbH holds a direct or indirect participation of more than 50%. Section 354a of the German Commercial Code (HGB) remains unaffected.

5 Delivery date and place of fulfilment

5.1 The agreed delivery and performance dates are binding. Advance deliveries and performances as well as deliveries and performances after the agreed delivery date are permitted only with the consent of MBDA Deutschland GmbH.

5.2 The receipt at the receiving office indicated by MBDA Deutschland GmbH is relevant for the timeliness of deliveries and performances. The Supplier has to inform MBDA Deutschland GmbH immediately if and as soon as there are indications that he will not be able to meet the delivery or performance date. The acceptance of a delayed delivery by MBDA Deutschland GmbH does not imply the waiving of any compensation claims.

5.3 If the Supplier is in default with a delivery or performance, MBDA Deutschland GmbH is entitled to charge a contractual penalty of 0.5% of the order value for each

commenced week of delay up to a maximum of 5% of the total contract value. In the event that the appropriate use of rights is not made at the time of acceptance of delivery, services or rectification, this penalty may be claimed until the date of the final payment. MBDA Deutschland GmbH is entitled to charge a penalty in addition to performance. Further rights and claims are reserved.

5.4 MBDA Deutschland GmbH is not obliged to accept partial deliveries or services. In case of agreed partial deliveries, the quantity remaining to be delivered is to be stated in the delivery note.

5.5 The place of fulfilment for deliveries and services provided by the Supplier is the receiving office determined in the purchase order. If there is neither a receiving office determined nor can it be derived from the nature of obligation, the MBDA Deutschland GmbH company headquarters are regarded as the place of fulfilment.

6 Shipment, passing of risk

6.1 The Supplier has to pack and ship the delivery properly abiding by all relevant packing and forwarding instructions.

6.2 Shipping documents such as delivery notes and packing slips shall be included with the deliveries. Order numbers and other data specified by MBDA Deutschland GmbH in the purchase order must be stated on all documents. MBDA Deutschland GmbH must be provided in advance with a note of dispatch at the latest on the day of shipment.

6.3 **US-ITAR classified material must be marked on sales packaging, transport packaging and on shipping documents!**

6.4 Any additional costs MBDA Deutschland GmbH incurs due to non-compliance with the above defined regulations will be charged to the Supplier.

6.5 In the case of deliveries without installation or assembly, the risk will pass when the goods are received at the receiving office determined by MBDA Deutschland GmbH. In the case of services and deliveries with installation or assembly, the risk will pass with the acceptance at the place of assembly.

6.6 The notional acceptance regulated in §640 clause 1 sentence 3 of the German Civil Code (BGB) is excluded.

7 Rights of MBDA Deutschland GmbH in case of defects

7.1 The Supplier is responsible for any defects of the delivery for the period of three years after the transfer of risk. The limitation

period amounts to five years after acceptance for buildings or works of which the success consists in the delivery of planning or monitoring services.

7.2 MBDA Deutschland GmbH will notify the Supplier about defects in writing as soon as these are detected during the ordinary course of business. Therefore, an 8D report may be issued. In this respect, the Supplier waives objection to a delayed formal complaint of defects.

7.3 In the case of a purchase or work contractual defect, MBDA Deutschland GmbH is, in addition to the statutory claims, entitled to rectify the defect itself after the fruitless expiration of a reasonable period set by MBDA Deutschland GmbH for supplementary performance, and to demand reimbursement of the necessary expenses, unless the Supplier refuses the supplementary performance with justification. In this respect, the statutory regulation for self-help in case of defects for work contracts (§637 BGB) applies to purchase contract agreements. MBDA Deutschland GmbH may demand advance payment from the Supplier for the expenses required to rectify the defect.

8 Rights and duties in case of breaches of service contracts

Different from section 7, in case of breaches of service contractual duties MBDA Deutschland GmbH's rights comply with the statutory regulations.

9 Duty of notify and care

9.1 The Supplier has the duty to notify MBDA Deutschland GmbH in case of his goods not being applicable for the intended use, both if MBDA Deutschland GmbH has informed him about the intended use of the delivery or if the intended use is recognizable without explicit indication.

9.2 Circumstances affecting negatively the agreed delivery dates have to be reported promptly to MBDA Deutschland GmbH in writing to clarify further actions.

9.3 The Supplier has to notify MBDA Deutschland GmbH immediately in writing of any changes of the composition of the used materials or of the design if different from previous equal deliveries to MBDA Deutschland GmbH. Any such changes require the written consent of MBDA Deutschland GmbH.

9.4 In the case of discontinuation of raw materials, components, or products ordered by MBDA Deutschland GmbH, the Supplier has to notify MBDA Deutschland GmbH immediately

in writing. This obligation to inform MBDA Deutschland GmbH lasts for an appropriate time period after placement of order.

10 Product liability

The Supplier has the obligation to check his deliveries for defects and to do everything feasible in order to avoid any product liability. If MBDA Deutschland GmbH is held responsible of the defectiveness of a product by a third party and if the defectiveness is entirely or partly due to a defect of the Supplier's delivery, MBDA Deutschland GmbH may demand indemnification towards the third party instead of compensation of all damages. The Supplier's obligation to pay damages includes also the costs of a precautionary recall in order to prevent damage if necessary.

11 Environmental Protection and Hazardous Materials

11.1 The Supplier has to ensure that deliveries and services meet the requirements of the regulations of environment protection, accident prevention and other industrial safety regulations, as well as safety rules and all statutory regulations prevailing in the Federal Republic of Germany. The Supplier has to inform MBDA Deutschland GmbH of any particular and uncommon treatment and waste disposal requirements for each delivery.

11.2 The Supplier has the duty to fulfil at any time all requirements according to the regulation No. 1907/2006 dated December 18th 2006 of the European Parliament concerning the handling of chemical substances (so-called "REACH regulation"). In particular, the Supplier has to fulfil all duties according to Articles 31 to 33 (incl.) of this regulation and further - even without any specific request - to provide MBDA Deutschland GmbH promptly with all information which is needed in the context of this contract according to the REACH regulations and which are relevant for the contractual use of products to be delivered by the Supplier. Any Supplier located outside the European Union has to fulfil the obligations of an importer stated in the regulations. These obligations of the Supplier are considered as essential contractual obligations (so-called "cardinal duties"), which are mandatory for the execution of the contract. If the Supplier does not sufficiently, not in time or not at all fulfil these obligations, he shall indemnify MBDA Deutschland GmbH against each and any damages, which MBDA Deutschland GmbH may incur from the non-fulfilment of these obligations by the Supplier.

11.3 The Supplier guarantees reacceptance and waste disposal according to section 10

paragraph 2 of the German Electrical and Electronic Equipment Act and shall bear any related costs.

12 Provision of materials

12.1 All documents and objects of any kind provided to the Supplier by MBDA Deutschland GmbH remain the property of MBDA Deutschland GmbH. They may be used exclusively for providing the order. The Supplier has to accept insurance for any materials provided to him against loss and deterioration. There is no right of retention on the part of the Supplier vested in materials belonging to MBDA Deutschland GmbH.

12.2 As far as any of the objects provided by MBDA Deutschland GmbH are processed, converted or transformed by the Supplier to form a new movable product, MBDA Deutschland GmbH is deemed the manufacturer. In the case of connection or inseparable blending with other objects, MBDA Deutschland GmbH acquires joint ownership in the new object in proportion of the value which the objects had at the time of connection or blending.

12.3 If the connection or blending effects that the products of the Supplier are considered as main object, MBDA Deutschland GmbH shall be entitled to co-ownership of the new object proportionally. The Supplier holds this co-ownership for safekeeping free of charge.

12.4 The Supplier has to carry out any maintenance and inspection work that may be necessary at his own expense as well as to insure the provided objects sufficiently and prove this to MBDA Deutschland GmbH upon request.

13 Rights of use

13.1 With the delivery of a copyright reserved work MBDA Deutschland GmbH obtains from the Supplier a non-exclusive, unrestricted and assignable right of use for all types of use.

13.2 The Supplier will grant MBDA Deutschland GmbH a non-exclusive, assignable free licence on inventions resulting from the purchase order or on licensed or granted property rights.

13.3 The Supplier grants MBDA Deutschland GmbH under reasonable terms a non-exclusive, assignable licence for all other background rights, proceedings and inventions, as well as licensed or granted property rights on inventions which are necessary for the deliveries' and services' use.

14 Official authorizations, Export licenses

14.1 The product to be delivered or parts of the product may be subject to export laws and regulations (hereafter referred to as “Export Regulations”). The contract parties are aware that non-compliance or deviations from the Export Regulations are prohibited. MBDA Deutschland GmbH provides the Supplier with all information necessary for examining any authorisation duties.

14.2 The Supplier marks any part of the product that is subject to Export Regulations at the time of signature of this contract or on receipt of a purchase order. Amendments to such information will be provided by the Supplier in the case of a change in the Export Regulations. All information concerning the relevant Export Regulations has to be provided to MBDA Deutschland GmbH. At request, the Supplier provides reasonable support in accomplishing the applicable Export Regulations.

14.3 If the product or parts of it is/are subject to Export Regulations, notwithstanding his duties according to section 14.2, the Supplier has the following obligations:

(a) The Supplier is responsible for obtaining punctually and free of charge for MBDA Deutschland GmbH all official approvals, licences and authorizations required globally or in the end-use statement for the export as well as for the delivery of the product to MBDA Deutschland GmbH and for the use of the product by MBDA Deutschland GmbH and by the Customer or the End-user according to the commission.

(b) As far as the product or parts of it is/are subject to export licensing procedures, the Supplier ensures that an export licence or comparable documentation is issued by the relevant authorities in time to allow delivery and operating of the product by MBDA Deutschland GmbH and by the Customer or End-user according to this contract and the applicable end-use statement.

(c) The Supplier indicates the export control classification number and the number of the relevant export licence on all delivery notes and invoices.

(d) The Supplier provides MBDA Deutschland GmbH with a copy of the export licence certificate, including a copy of all clauses concerning MBDA Deutschland GmbH’s obligations to stick to the applicable regulations, including, but not alone, any restrictions on subcontracting, any restrictions on disclosure, any requirements for confidentiality agreements, any limitations

regarding employees and any other restrictions or conditions that result in authorisation being more restrictive or not as comprising as planned in the authorization or licence request and/or in the commission documentation. Clauses that are classified or that do not concern MBDA Deutschland GmbH’s obligations may be redacted in the copy submitted to MBDA Deutschland GmbH, if required by the US Government.

14.4 If one or more Technical Assistance Agreements (“TAAs”) is/are required for the fulfilment of this contract, they have to be agreed with MBDA Deutschland GmbH before being passed on to the export authorities. A copy of the issued authorization including a copy of all clauses concerning the obligations of MBDA Deutschland GmbH has to be provided to MBDA Deutschland GmbH.

14.5 Irrespective of anything provided for to the contrary in the commission, MBDA Deutschland GmbH’s ability to deliver and maintain products equipped with the Supplier’s product globally or according to the end-use statement as well as the Customer’s or End-user’s ability to use, to operate and to maintain the products worldwide or according to the end-use statement are essential contract components. In the event that any Export Regulation prevents the Supplier from fulfilling this obligation, the Supplier shall, at their own expenses, and within a timeframe acceptable for MBDA Deutschland GmbH

(a) either obtain the necessary authorization for his product from the relevant administration, for MBDA Deutschland GmbH in order to be able to sell and maintain their products, as well as for the relevant Customer or End-user (concerning the present end-use statement) in order to be able to continue using, operating and maintaining MBDA Deutschland GmbH’s product, or

(b) replace or modify the technology subject to the restriction in a way that the product does not infringe the Export Regulations any more, while all requirements defined in this contract are still being fulfilled, irrespective of MBDA Deutschland GmbH’s rights of refund of all costs, of indemnity and refund of losses that are suffered as a consequence of breach of contract and of his rights of terminating this contract because of non-compliance on the side of the Supplier.

14.6 Irrespective of other regulations of this contract, the Supplier is liable for all damages, losses and liabilities incurred by MBDA Deutschland GmbH as the result of the Supplier’s non-compliance with its obligations under section 14.

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15 Confidentiality

15.1 The purchase order of MBDA Deutschland GmbH has to be treated confidentially. Furthermore, the Supplier has to keep all commercial and technical information and documents, which become known to him through the business relationship and which are not generally known, secret and use them exclusively for providing the ordered deliveries. Any subcontractors have to be bound to confidentiality accordingly. Drawings, models, samples, and similar objects shall not be submitted or made available to unauthorised third parties. Duplicating such objects is permitted only within the limits of copyright provisions and to the extent required in order to fulfil the obligations incumbent upon the Supplier.

15.2 The Supplier is only entitled to mention the company or the brand name of MBDA Deutschland GmbH for purposes of advertising materials, when naming references, or for other publications, if MBDA Deutschland GmbH has consented to this in writing in advance.

15.3 MBDA Deutschland GmbH is entitled to demand the compliance with additional safety regulations.

15.4 If it is a requirement of a contract that information classified as „Verschlussache – Nur für den Dienstgebrauch“ („Restricted“) (i.a.w. Handbuch für den Geheimschutz in der Wirtschaft „GHB“) is to be exchanged between MBDA Deutschland GmbH and supplier, the supplier commits to meeting the requirements of the “VS-NfD-Merkblatt” (Instruction sheet for the handling of information classified “VS-Nur für den Dienstgebrauch”) (Annex 4 GHB). The supplier will appoint a person responsible for the protection of such information; this person is also responsible for completing Annex 4b GHB and submitting the form to MBDA Deutschland GmbH.

16 Safety of the supply chain

MBDA Deutschland GmbH is certified according to the standards of an Authorized Economic Operator (AEO). The Supplier contracted by MBDA Deutschland GmbH declares that the production, storage, transport, processing, treatment, delivery and (un-) loading of goods are performed and handled on secure industrial premises until the goods are handed over to MBDA Deutschland GmbH. Furthermore, the goods have to be protected against unauthorised access. In addition, the Supplier declares that the personnel tasked with the above mentioned activities are reliable. Business partners acting on behalf of the Supplier must be informed by

the supplier that appropriate measures need be taken in order to secure the supply chain.

17 Spare parts, Readiness to deliver

17.1 The Supplier has to supply spare parts to MBDA Deutschland GmbH under reasonable conditions throughout the double time period of the usual technical lifetime.

17.2 If the Supplier discontinues the delivery of the goods after expiration of the period set forth in section 17.1 or during that period, he has to provide MBDA Deutschland GmbH with the opportunity for a last purchase order under reasonable conditions.

18 Protection of personal data

In accordance with the German Federal Data Protection Law, MBDA Deutschland GmbH may transfer personalized data of its employees to establish contacts with suppliers and for purposes of fulfilling the contractually negotiated purpose only. The transfer of personalized data to sub-contractors must be approved by MBDA Deutschland GmbH prior to such transfer. After contract performance or upon request by MBDA Deutschland GmbH the supplier shall destroy the data according to data protection requirements.

19 Minimum Salary

The supplier commits itself, to comply with all applicable laws, rules and regulations, in particular applicable collective labour agreements or mandatory minimum salary provisions.

The supplier commits itself to fulfill its obligations in respect to the Minimum Salary Law (Mindestlohngesetz / MiLoG) and in particular its obligations to pay the minimum salary and to transfer the “Urlaubskassenbeiträge” (Holiday Cash Fees) according to the German Employee Dispatch Act (Arbeitnehmerentsendegesetz / AEntG) - and also to comply with the applicable wage provisions for and of the supplier’s enterprise and/or the MiLoG, respectively). The supplier confirms that it is not excluded from the assignment of public procurement due to § 19 MiLoG. If the supplier contracts sub-suppliers, it will also undertake to bind these to pay the minimum salary. The supplier will hold the Purchaser harmless from all claims, which are raised against the Purchaser because a sub-supplier Violations of the AEntG/MiLoG. In relationship to the Purchaser the supplier takes over these obligations solely, which Purchaser and supplier have jointly to fulfill according § 1a AEntG.

The supplier commits itself to use only employees which have valid work permits and - if necessary valid residence permits. The supplier commits itself to register his employees at the local social security insurance institution. The Purchaser has the right to terminate the subcontracts immediately for a good cause without notice in case the supplier does not comply with these obligations.

The supplier commits itself, to comply with all applicable laws, rules and regulations, in particular applicable collective labour agreements or mandatory minimum salary provisions.

The supplier commits itself to fulfill its obligations in respect to the Minimum Salary Law (Mindestlohngesetz / MiLoG) and in particular its obligations to pay the minimum salary and to transfer the "Urlaubskassenbeiträge" (Holiday Cash Fees) according to the German Employee Dispatch Act (Arbeitnehmerentsendegesetz / AEntG) - and also to comply with the applicable wage provisions for and of the supplier's enterprise and/or the MiLoG, respectively). The supplier confirms that it is not excluded from the assignment of public procurement due to § 19 MiLoG. If the supplier contracts sub-suppliers, it will also undertake to bind these to pay the minimum salary. The supplier will hold the Purchaser harmless from all claims, which are raised against the Purchaser because a sub-supplier Violations of the AEntG/MiLoG. In relationship to the Purchaser the supplier takes over these obligations solely, which Purchaser and supplier have jointly to fulfill according § 1a AEntG.

20 The supplier commits itself to use only employees which have valid work permits and - if necessary valid residence permits. The supplier commits itself to register his employees at the local social security insurance institution. The Purchaser has the right to terminate the subcontracts immediately for a good cause without notice in case the supplier does not comply with these obligations.

21 Final provisions

21.1 The laws of the Federal Republic of Germany excluding the provisions of the UN Convention on the International Sale of Goods (CISG) shall apply to all legal relationships between MBDA Deutschland GmbH and the Supplier.

21.2 Place of jurisdiction for all disputes arising from this business relationship governed by this General Terms and

Conditions of Purchase is Ingolstadt. MBDA Deutschland GmbH is furthermore entitled to file a claim against the Supplier at any other place of general or special jurisdiction.

21.3 Changes and amendments to this contract and side agreements require the written form. This applies also to any waiver to this written-form clause.

21.4 If any of the above provisions should be ineffective, the validity of the remaining provisions shall remain unaffected. The parties are obliged to agree upon a regulation to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.