

# DRAEXLMAIER Group Global Terms and Conditions of Purchase

Revision 4, dated April 1, 2022

## Definitions

- **Affiliate**: means a company which is directly or indirectly controlled by a party, controls such party, and/or is under common management or joint control with such party, whereby joint control will be assumed if at least 50% of the shares or voting rights are held
- **Binding Offer** means any Supplier's offer to enter into a Purchase Contract with Buyer.
- **Buyer** means the party which places the order for the purchase of Products (as defined below) or Tools (as defined below).
- **Buyer's Plant** means the plant of Buyer as indicated in the Purchase Contract.
- **Customer** means any OEM (as defined below), any Tier 1 Supplier, or any purchaser to which Buyer delivers Products.
- **Final Customer** means the Third Party that purchases the Customer Vehicle (as defined below) produced by Customer (as defined below).
- **Nomination Letter** means Buyer's acceptance of Supplier's Binding Offer.
- **OEM** means original equipment manufacturer, i.e. car manufacturer.
- **Price Sheet** means a price information sheet issued by Buyer to Supplier documenting negotiated prices in series.
- **Products** means the production goods, products, works and services covered by the Purchase Contract (as defined below) including without limitation all production and service parts, components, assemblies, accessories, raw materials, portions, items, repairs, replacements and substitutions thereof.
- **Purchase Contract** means any contract between Buyer and Supplier for the purchase of Products and their delivery from Supplier to Buyer.
- **Purchase Order** means any order for the purchase of Products by Buyer, including Buyer's Release Schedules.
- **Release Schedule** means any document that describes the required quantity of Product and the times of delivery (e.g. delivery call-offs).
- **Supplier** means the party with which the order for the purchase of Products (as defined below) or Tools (as defined below) is placed.
- **Third Party** means any natural person, corporation, partnership, governmental authority or other legal entity, including Customer (as defined below), other than Buyer or Supplier.

## 1. Terms and Conditions; Scope; Buyer's Affiliates

- a) Supplier has read and understands the DRAEXLMAIER Group Global Terms and Conditions of Purchase including its Annexes (together, the "**Terms and Conditions**") and agrees that the Terms and Conditions shall apply exclusively to all purchases of Products by Buyer from Supplier and to all Purchase Contracts specifically created by Buyer in North America and Asia. No other provisions, in particular Supplier terms and conditions, shall apply, irrespective of whether or not such provisions have been expressly rejected by Buyer or if Buyer, having knowledge of such other provisions, effects contractual performance without reservation. In the event of a conflict between the DRAEXLMAIER Group Global Terms and Conditions of Purchase and its Annexes, the DRAEXLMAIER Group Global Terms and Conditions of Purchase shall prevail unless stipulated otherwise in an Annex.
- b) Upon Buyer's and/or its affiliated companies' request, Supplier shall supply Products to Affiliates as defined herein. Any Purchase Order placed by an Affiliate and any Purchase Contract resulting therefrom shall create an independent contractual relationship solely between the Affiliate and Supplier. Buyer shall not be bound by or be responsible or liable for any of its Affiliate's obligations in this connection.

## 2. Offer; Acceptance

- a) Supplier's offers are Binding Offers to enter into a Purchase Contract with Buyer. Offers shall be made in response to Buyer's Requests for Quote (**RFQ**) and in text form (including fax and e-mail) or by electronic data interchange ("**EDI**") through Buyer's eSourcing Portal.
- b) The Supplier's Binding Offer is accepted by the Buyer by the issuance of a Nomination Letter. The Nomination Letter shall be signed by Buyer and Supplier and is the authorization for the Supplier to sell and deliver Products to Buyer in accordance with specific Purchase Order. The Nomination Letter shall not create an obligation for the Buyer to purchase specific volumes of Products from the Supplier.
- c) After the Nomination Letter has been signed by both Parties, Buyer shall issue an individual Purchase Order to Supplier to enter into individual Purchase Contracts. Any Purchase Order which is not expressly rejected within five (5) business days shall be deemed as accepted. In addition, any expression of acceptance of the individual Purchase Order by Supplier, including Supplier's commencement of (i) work on the Products or (ii) performance of all or any portion of the services subject to the Purchase Order (the "**Services**"), shall constitute an acceptance of Buyer's offer and a closure of an individual Purchase Contract.
- d) Upon the execution of the Nomination Letter and for information purposes only, the Buyer issues a Price Sheet to the Supplier.
- e) Purchase Orders shall be valid only if made in text form (including fax and e-mail) or by EDI.

## 3. Customer Requirements; Buyer Requests

- a) Where Products are sold, or are incorporated into goods or services that are sold, by Buyer to a Customer (the "**Customer Goods**"), whether directly or indirectly through an upper tier supplier or any other Third Party (the "**Upper Tier Supplier**"), Supplier shall take such steps, provide such disclosure, comply with such requirements and do all other things as reasonably requested by Buyer to meet its obligations under the terms and conditions of any contract or purchase order or other document between Buyer and Customer (or Upper Tier Supplier, respectively), (the "**Customer Terms**") that may be applicable. This may include Supplier accepting changes to the Purchase Contract corresponding to the respective Customer Terms, including without limitation changes to provisions on delivery, packaging and labeling requirements; defective Products and applicable limitation periods; intellectual property rights and indemnifications; access to records; and replacement and service parts. If necessary to perform a Buyer request, Buyer shall provide Supplier with information regarding the applicable Customer Terms, provided that such information is non-confidential; upon Buyer's request, Supplier shall use best efforts to procure information regarding the applicable Customer Terms.

- b) Buyer shall reimburse Supplier for reasonable costs in connection with Buyer Requests, provided that Supplier (i) informs Buyer of such costs prior to performing the respective Buyer Request and (ii) provides to Buyer a detailed and auditable report about the actions taken and costs incurred. If Supplier's costs are reduced by a Buyer Request, Supplier shall notify Buyer in writing immediately and the price agreed between Buyer and Supplier shall be reduced accordingly.
- c) Supplier shall, with immediate effect, adjust its invoices to reflect any price reduction pursuant to the foregoing provisions.

#### **4. Quality Requirements**

Supplier shall comply with Buyer's **Quality Requirements for Production Material** set forth in Annex 1.

#### **5. Sourcing Limitations**

Unless the Nomination Letter stipulates otherwise, Buyer shall have the right to obtain Products or similar products, works and services from a Third Party or from Buyer's internal sources.

#### **6. Subcontractor**

- a) Without Buyer's prior written consent, Supplier shall not subcontract or delegate the performance of any deliveries, works or services. Supplier shall remain responsible and be liable for the performance of any approved subcontractor and shall ensure that any approved subcontractor (i) follows all agreed quality assurance measures (including without limitation the Quality Requirements for Production Material set forth in Annex 1) so that Products delivered to Buyer meet the agreed quality standards; and (ii) possesses and follows all agreed process instructions and test plans. For this purpose, Supplier shall carry out inspections or on-site audits of the approved subcontractor and any sub-suppliers on a regular basis and as directed by Buyer.
- b) Supplier shall take all reasonable steps to enable Buyer to audit Supplier's subcontractors and sub-suppliers and shall reasonably assist Buyer with such audits.

#### **7. Volume Projections**

Any estimates, forecasts or projections of volumes or quantities of Products provided by Buyer (the "**Estimates**"), including but not limited to Estimates provided in Buyer's Release Schedules, are non-binding. Estimates are provided for informational purposes only and are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time, including without limitation due to changes in Customer's requirements. Buyer does not assume any responsibility or liability with respect to the accuracy or completeness of any such Estimates.

#### **8. Buyer's Commitment of Purchase**

- a) The commitment of purchase from Buyer to Supplier is determined in the Buyer's Release Schedules. Unless otherwise agreed between Buyer and Supplier, the Buyer's commitment of purchase includes two (2) weeks of finished Products and two (2) weeks of semi-finished Products and Product related raw materials.
- b) Buyer shall have no respective obligation to purchase, except to the extent agreed in the Purchase Contract.

## **9. Delivery Terms**

- a) Unless otherwise agreed in the Purchase Contract, deliveries shall be made FCA Incoterms 2020 to the place of delivery specified in the Purchase Contract.
- b) Deliveries shall be made in quantities, at the dates and places, within the periods and in the sequences (the "**Delivery Terms**") specified in the Purchase Contract and in Buyer's weekly Release Schedules (as applicable).
- c) If the Purchase Contract does not specify the quantities, or specifies the quantities as "blanket order", "as released", "as scheduled", "as directed", "subject to Buyer's release schedules" or in a similar manner, then, during the term of the Nomination Letter, Supplier shall deliver such quantities on such delivery dates or in such delivery periods or sequences as specified in the Release Schedules provided to Supplier by Buyer from time to time in reference to the respective Nomination Letter or in accordance with Buyer's delivery call-offs, and at the prices and on the other terms specified in the Nomination Letter; provided that Buyer shall purchase no less than one piece or unit of each Product and no more than one hundred percent (100%) of Buyer's requirements of Products.
- d) Delivery dates, periods and sequences agreed in the Purchase Contract shall be binding. Buyer and Supplier agree that time is of the essence and acknowledge that Buyer is dependent upon deliveries immediately prior to the production of Customer Goods. Thus, Supplier shall deliver Products "just-in-time" and "just in sequence" (as applicable). The foregoing provisions shall also apply to delivery dates, periods and sequences specified in a Release Schedule. In the case that Buyer is responsible for transportation, Supplier shall have Products ready in sufficient time to allow for loading and shipping.
- e) The standard for determining whether the delivery schedule or delivery date, period or sequence has been kept is the receipt of Products at the place of delivery specified in the Purchase Order.
- f) Buyer may reject and return at Supplier's expense and risk (i) any delivery of Products (or portion thereof) which is received before the delivery date, period or sequence, (ii) any partial deliveries or (iii) any excessive quantity of Products. The same shall apply to deliveries received after the delivery date, period or sequence. Alternatively, Buyer may accept deliveries in the foregoing cases, provided that the agreed payment terms shall remain unaffected.
- g) Supplier shall inform Buyer immediately in writing of any actual, potential or expected delay in delivery. This shall not affect the applicable delivery dates, periods and sequences. Supplier shall use its best efforts and take all measures and precautions to minimize the effects of any such delay and shall provide written notice to Buyer of the corrective measures Supplier is taking; in particular, Supplier shall use its best efforts to preferentially fulfill its delivery obligations towards Buyer (e.g. privileged allocation to Buyer).
- h) Buyer shall be entitled to recover from Supplier all of its losses, damages (including without limitation Buyer or Customer production downtime), costs and expenses (including without limitation reasonable attorney fees) incurred as a result of Supplier's breach of the Delivery Terms, unless the breach was not caused by Supplier's fault or negligence. If Supplier, for any reason, does not comply with the Delivery Terms, Buyer at its option may (i) approve revised Delivery Terms; (ii) require, at Supplier's expense, shipment of any of the Products by a more expeditious method of transportation; or (iii) pursue any other of Buyer's rights or remedies hereunder or under applicable law. In addition, in the case of default in delivery, Buyer may terminate the Purchase Contract.

## **10. Packaging and Shipping**

- a) Products shall be suitably, carefully and appropriately prepared for shipment and shall be labeled, packed and shipped in accordance with Buyer's "**Logistics Requirements for Production Material**" set forth in Annex 2 and in accordance with reasonable instructions of Buyer's packaging department (if any).

If Products are not shipped in accordance with Buyer's Logistic Requirements and Buyer's reasonable instructions, Supplier shall reimburse and compensate Buyer for any associated losses, damages, costs and expenses, including but not limited to the excess costs and expenses detailed in Buyer's Logistics Requirements for Production Material.

- b) Supplier shall bear all costs and expenses associated with the labeling, packaging and shipping of Products and Supplier shall not charge Buyer for any such costs and expenses, if not otherwise agreed in writing.
- c) Each shipment shall contain a packing slip (as described in Buyer's Logistics Requirements for Production Material) identifying the Products shipped and, if requested by Buyer, an appropriate certificate of analysis. If Supplier fails to provide such packing slip or certificate of analysis, Buyer may assess and analyze the delivery and charge a processing fee to Supplier.

#### **11. Title and Risk of Loss; Waiver of Liens**

- a) Unless otherwise agreed to in writing, the title to Products and the risk of loss, destruction or damage of Products shall pass to Buyer upon delivery.
- b) All terms concerning the retention of title and any other terms regarding the Products or Tools are defined in the Buyer's "**Bailment Terms**" (Annex 4).

#### **12. Payment Terms**

- a) The agreed prices are fixed prices.
- b) The payment terms shall be sixty (60) calendar days net of timely delivery of Products and receipt of a duly and auditable invoice, unless otherwise agreed in the Nomination Letter. Insofar the German law applies to Purchase Contract and unless negotiated otherwise between Buyer and Supplier, the payment terms shall be thirty (30) calendar days net of timely delivery of goods and or performance of services and receipt of a duly and auditable invoice.
- c) Payment shall be made in the local currency at the Buyer's Plant by wire transfer unless otherwise agreed in the Nomination Letter.
- d) Buyer reserves the right to withhold payment for Products which are non-conforming to the requirements of the Terms and Conditions or the Purchase Contract until such time as Supplier has fulfilled all of its obligations.
- e) Supplier may not assign its rights to payment under the Purchase Contract without prior approval from Buyer. Supplier must immediately submit written confirmation of the assignment and provide all appropriate financial information regarding the transaction and/or factoring contract to the Buyer. Supplier shall ensure that Buyer may continuously set off its claims against the factor/assignee.
- f) Payment for Products shall not constitute acceptance of Products, and all Products shall be subject to Buyer's inspection and rejection at Buyer's Plant as well as other rights of Buyer under the Terms and Conditions, the Purchase Contract or applicable law.

#### **13. Set Off**

- a) In addition to any right to set-off provided by law, Buyer and/or its Affiliates shall have the right to set-off, or recoup, any losses against amounts due to Supplier and/or its Affiliates.

#### 14. Spare Parts

After the end of series production Supplier shall sell to Buyer Products necessary to fulfill Buyer's or its Customers' service parts requirements relating to such Products. Buyer's **Spare Parts Requirements for Production Material** set forth in Annex 3 shall apply to the supply and delivery of spare parts by Supplier.

#### 15. Tooling

Supplier shall not purchase for the account of Buyer or charge to Buyer any tools, Supplier manufactured machinery, technical information or any other items of Buyer or Buyer's Customers required for the production and testing of Products or parts thereof which are in the possession of or supplied to Supplier by Buyer or on its behalf or by Customer or on its behalf or paid for by Buyer and held by Supplier (collectively, "**Tools**"), pursuant to any Purchase Contract, unless Buyer and Supplier have executed an agreement regarding bailment of Tools as per Buyer's "**Bailment Terms**" set forth in Annex 4.

#### 16. Intellectual Property Rights

##### a) Definitions:

**Intellectual Property Rights, "IP Rights,"** means any and all copyrightable works (including software and drawings), ideas, inventions patent applications, patents, techniques, processes and discoveries, know-how, processes, compilations of information, trademarks, results of testing, results of research, design rights, alternative or improved methods of accomplishing the objectives of the Purchase Contract, and all similar or equivalent forms of protection anywhere in the world (whether separately or as part of Products).

**Background Intellectual Property Rights, "Background IP Rights,"** means all **IP Rights** of Supplier (i) existing prior to the conclusion of the relevant Purchase Contract or (ii) created or developed during the term but not in connection with the relevant Purchase Contract; or (ii) acquired or developed after the conclusion of the relevant Purchase Contract but in a strictly independent manner and entirely outside of any work conducted under the Purchase Contract.

**Foreground Intellectual Property Rights, "Foreground IP Rights,"** means all **IP Rights**, of Supplier that (i) are developed and/or acquired in whole or in part by Supplier, in connection with this Contract.

##### b) Foreground IP Rights:

It is hereby agreed that all Foreground IP Rights, whether created by Supplier individually or jointly with Buyer, shall be the sole and absolute property, in equity and law, of Buyer. In addition, the Buyer shall have the absolute right to file applications for the protection thereof (including without limitation applications for patent, utility model, design patent, registered design and copyright) in any country.

##### c) Background IP Rights:

Supplier shall retain all Background IP Rights. Unless otherwise agreed in writing, Supplier grants to Buyer free of charge an irrevocable, non-exclusive, perpetual, worldwide, transferable license to use Background IP Rights to make, have made, use, reproduce, modify, improve, prepare derivative works of, distribute, display, perform, offer to sell, sell and import Products, derivations and improvements thereof and/or combination of Products with other products and/or parts. The Supplier agrees that Buyer may grant a sublicense for Background IP Rights to its Affiliates and its Customers that use the Product.

d) Operation and Functions of Products:

At Buyer's request, Supplier shall furnish immediately to Buyer all other information, know-how and data (including drawings and software) which Buyer reasonably deems necessary to understand the operation of Products and to maintain Products and to resell Products, including without limitation all information and data Supplier acquires or develops in the course of Supplier's activities under the Nomination Letter. At Buyer's request, Supplier shall also discuss with Buyer or another party designated by Buyer, without restrictions on use or disclosure, any potential design, quality or manufacturing problems with Products Supplier worked on or encountered prior to the Nomination Letter.

e) Proprietary Names:

Neither of the parties shall use any of the other party's proprietary names, logos, trade names, trademarks or service marks without the prior written consent of the party which owns or controls such proprietary names or trademarks. Without Buyer's prior written consent, Supplier shall not publish in any manner through any marketing or other medium that Supplier has contracted with or has been supplying Products to Buyer, and shall not make reference to Buyer in publications, unless such publication is required by mandatory law.

f) Intellectual Property Rights Indemnification:

Supplier warrants, represents and undertakes that the Products, supplied hereunder, do not infringe any IP Rights of any third party. Supplier shall investigate, defend, hold harmless and indemnify Buyer, its successors, its affiliates, officers, employees and Customers against any actual or alleged Third Party claims or assertions of IP Rights infringement (including misuse or misappropriation of trade secrets) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the Products or services contracted hereunder. If at any time it is alleged that the use of the Products infringe the rights of any third party, Supplier shall at Buyer's option and Supplier's cost:

- (i) modify or replace the Products in order to avoid the infringement; or
- (ii) procure for Buyer (and any relevant customer of Buyer) the right to continue using the Products; or
- (iii) repurchase the Products at the price paid by Buyer or Buyer's customer.

**17. Products; Defective Products; Recall Campaigns; Remedies**

a) Products shall (i) be new, state-of-the-art and conform to the Terms and Conditions and Purchase Contract in all respects; (ii) conform to all agreed specifications, standards, drawings, samples, CAD-Data and descriptions; (iii) be merchantable; (iv) be free from any defects in design; (v) be free from any defects in materials, in particular, fit for the agreed purpose for which Buyer intends to use Products, including the intended use for the respective Customer Good; and (vi) be free of liens, claims and encumbrances of third parties.

b) Supplier shall perform an outgoing quality inspection of Products and create a detailed documentation thereof. After receipt of Products at Buyer's Plant where Products shall be incorporated into Buyer's product, Buyer shall inspect Products for defects in the ordinary course of its business. Buyer shall notify obvious deviations of identity and quantity of Products and visible and obvious damage to Products without undue delay. The Buyer is only obligated to inspect and confirm the identity and quantity of the delivered packaging units. Other defects shall be notified without undue delay after being discovered. Buyer shall not be under any other inspection and notification obligations with respect to its claims for defects. Buyer reserves the right to reject Products as defective. Neither payment nor acceptance of Products shall constitute acknowledgment of the absence of defects or limit any of Buyer's rights hereunder.

- c) Buyer, at its option, may reject and return at Supplier's risk and expense Products that fail to conform to the requirements of the Terms and Conditions or Purchase Contract or are otherwise defective. Supplier shall, at Buyer's choice, render subsequent performance by repairing defective Products or replacing them with non-defective Products; the place of subsequent performance shall be either at Buyer's Plant or at any other location designated by Buyer. If subsequent performance fails within a reasonable grace period granted to Supplier by Buyer or is impossible, Buyer may, at its option, (i) terminate the Purchase Contract in whole or in part; (ii) reduce the price; or (iii) remedy defective Products or have a Third Party performing such remedial work at Supplier's expense. Subject to Buyer's inspection and notification obligations hereunder, Buyer has the foregoing rights even if the defect does not become apparent to Buyer until the manufacturing, processing, or assembly stage or later.
- d) Supplier shall bear, and reimburse Buyer for, all costs and expenses incurred by Buyer in connection with the subsequent performance, including, but not limited to costs for inspection, sorting, testing, evaluations, storage, repair, replacement, return, transport, journeys, labor and material, rectification of defects by Buyer or a Third Party, or rework as well as dismantling and installing.
- e) In addition to all other remedies hereunder or under applicable law Supplier shall be liable for, and reimburse and compensate Buyer for, any damages caused by defects, including, but not limited to, losses, damages, costs and expenses (including without limitation reasonable attorney fees) incurred by Buyer and resulting from (i) production interruptions and production downtimes, (ii) recall campaigns or other satisfaction or corrective service actions in connection with Products, Customer Goods or Customer Vehicles, whether performed by Buyer or its Customer, (iii) claims for personal injury (including death) or property damage, (iv) Customer issuing a debit memo to Buyer or other charges by Customer to Buyer as the result of defective Products, and (v) the purchase of replacement products from a Third Party.
- f) Defective Products which are discovered by Buyer or Customer prior to Customer releasing the Customer Vehicle (the "**Customer Vehicle**") for delivery to the Final Customer shall be returned to Supplier at Supplier's request and at Supplier's costs. In the event Products are discovered to be defective after Customer has incorporated such Products into a Customer Vehicle and the Customer Vehicle has been delivered to the Final Customer, Supplier is not entitled to the return of such Products and Buyer shall not be obliged to return such Products. At Supplier's request, Supplier is only entitled to the return of such Products, if and insofar as Buyer's Customer provides such Products to the Buyer. Supplier shall bear and reimburse Buyer for all costs associated with the return of such Products. Supplier agrees that the detection of defects and the determination of related losses, damages, costs and expenses resulting from such defects are done according to the applicable Customer's specific models of determining defects and specific methods of invoicing to Buyer. The data provided by Customer with respect to any defective Products shall be the conclusive evidence for the losses, damages, costs and expenses incurred by Buyer and to be reimbursed and compensated hereunder. Buyer may debit Supplier's account for any and all losses, damages, costs and expenses to be borne by Supplier pursuant to this Section 17. Supplier shall pay any amounts due and shall assume all collection costs.
- g) The limitation period for claims for defects shall begin on the date Products are delivered and shall end on the later of (i) the expiration of any limitation period granted by the Buyer's Customer, (ii) the fifth (5th) anniversary of the delivery, or (iii) any longer limitation or warranty period under the national law of any sales market into which Products and Customer Goods, respectively, are supplied.

Buyer's claims for defects pursuant to this Section 17 are in addition to the statutory claims or implied warranties for defects available to Buyer. The claims for defects pursuant to this Section 17 and the statutory claims or implied warranties for defects available to Buyer may be asserted by Buyer also in respect of guarantees given by Supplier. Liability to pay damages shall be independent of fault in cases in which Supplier has given a guarantee. Any additional claims directly resulting from a guarantee given by Supplier shall remain unaffected.

If reasonably requested by Buyer, Supplier shall enter into a separate agreement for the administration and processing of charge backs for defects.

## **18. Indemnification**

- a) Supplier shall indemnify, defend and hold harmless Buyer and its Affiliates, Customers, directors, officers, employees and agents from and against any claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorney fees) (the “**Liabilities**”) arising out of or related to: (i) personal injury (including death) of any natural person (including, without limitation, Buyer’s employees); (ii) the violation of any applicable product liability laws by Products and any recall campaign or other Customer satisfaction or corrective service action in which Buyer, or Customer, participates in connection with Products, Customer Goods or in connection with Customer Vehicles; and (iii) the violation by Products of any applicable law, rules, codes, industry standards and regulations (as set forth in Section 31) of the country of Buyer and other jurisdictions in which Products, and Customer Goods, are to be sold.
- b) In the case of Supplier’s fault, the obligations to indemnify, defend and hold harmless under Section 18 a) shall also apply with respect to Liabilities arising out of or related to damages to any property (including, without limitation, Buyer’s property) or any spill, discharge or emission of hazardous wastes or substances which relate to, in whole or in part, (i) any defect of Products or any failure of Supplier to warn or any improper handling, operating or installation instructions or other act or omission of Supplier with respect to Products, or (ii) the performance by Supplier of any services for Buyer, whether on the premises of Buyer, Supplier or any Third Party or not.
- c) In the case of Supplier’s fault, the obligations to indemnify, defend and hold harmless under Section 18 a) shall also apply with respect to Liabilities arising out of or related to (i) any breach of the Terms and Conditions by Supplier, (ii) any claim of a Third Party relating to Products or their quality, (iii) Products or Supplier’s performance of obligations under the Purchase Contract in any other way.
- d) In the case of Supplier’s fault, the obligations to indemnify, defend and hold harmless under Section 18 a) shall also apply with respect to any Liabilities arising out of or related to the violation of any Third Party IP Right by Products.
- e) Supplier’s obligation to indemnify, defend and hold harmless under this Section 18 shall (i) apply regardless of whether the Liabilities arise in tort, negligence, contract, strict liability or otherwise; (ii) be in addition to the statutory indemnifications available to Buyer; and (iii) not be limited in any way by any limitation on the amount or type of Liabilities.
- f) The obligations to indemnify, defend and hold harmless under this Section 18 shall apply on first demand.
- g) In addition and not in limitation of the foregoing, Supplier shall pay interest in accordance with applicable law to Buyer on all amounts owed under this Section 18. Buyer may at its option participate in the defense of any Third Party claim against Supplier and affecting Buyer with Buyer’s own attorney at Supplier’s expense.
- h) Supplier shall not be liable according to Section 18 to the extent the Liabilities are caused by negligent or intentional acts or omissions of Buyer or its Affiliates.

## **19. Buyer’s Limitation of Liability**

IN NO EVENT WILL BUYER BE LIABLE FOR LOSS OF ANTICIPATED REVENUE OR PROFITS, INTEREST, PENALTIES OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, MULTIPLE, OR EXEMPLARY DAMAGES OR LIABILITIES IN CONNECTION WITH THE PURCHASE CONTRACT, WHETHER FOR BREACH OF CONTRACT, LATE PAYMENT, PROPERTY DAMAGE, PERSONAL INJURY, ILLNESS, OR DEATH OR OTHERWISE.

IN ADDITION AND WITHOUT LIMITING ANY OF THE FOREGOING, BUYER WILL HAVE NO OBLIGATION FOR AND WILL NOT BE REQUIRED TO PAY SELLER, DIRECTLY OR ON ACCOUNT OF CLAIMS BY SUPPLIER'S SUBCONTRACTORS, FOR LOSS OF ANTICIPATED PROFIT, FAILURE TO REALIZE ANTICIPATED PRODUCTION VOLUMES, REVENUES OR SAVINGS, UNABSORBED OVERHEAD, INTEREST ON CLAIMS, PRODUCT DEVELOPMENT AND ENGINEERING COSTS, TOOLING, FACILITIES AND EQUIPMENT REARRANGEMENT COSTS OR RENTAL, UNAMORTIZED CAPITAL OR DEPRECIATION COSTS, OR GENERAL ADMINISTRATIVE BURDEN CHARGES FROM TERMINATION OF THE CONTRACT.

## **20. Termination for Breach, Sale of Assets or Change of Control**

- a) Buyer may, upon written notice to Supplier, terminate all or any part of the Purchase Contract, without liability to Supplier, if Products are developed by Supplier for Buyer and the development is not successful.
- b) Buyer may, upon written notice to Supplier, terminate all or any part of the Purchase Contract, without liability to Supplier, if Supplier breaches any term of the Terms and Conditions or Purchase Contract which is not capable of remedy or, in the case of a breach which is capable of remedy, if Supplier does not remedy that breach within a reasonable grace period granted by Buyer. The same shall apply if Supplier fails to make progress and it is obvious that the timely and proper delivery of Products within the agreed delivery dates, periods and sequences plus a reasonable grace period cannot be effected.
- c) Buyer may terminate all or any part of the Purchase Contract upon giving at least two (2) months' prior written notice to Supplier if a Change of Control (as defined in this item below) occurs to Supplier. Change of control means with respect to Supplier: (i) the sale of all or substantially all of Supplier's assets or business relating to the Purchase Contract other than to an Affiliate; (ii) a merger, reorganization or consolidation involving Supplier or its ultimate parent resulting in a surviving entity in which at least fifty percent (50%) of the voting rights are directly or indirectly held by a person or entity which has not been an Affiliate of Supplier prior to such merger, reorganization or consolidation; or (iii) a direct or indirect acquisition by a person or entity, or group of persons or entities, acting in concert and not being an Affiliate of Supplier of more than fifty percent (50%) of the voting rights or of management control of Supplier.
- d) Buyer may immediately terminate all or any part of the Purchase Contract if Customer cancels underlying purchase contracts relating to Products.

## **21. Termination for Insolvency and Lack of Creditworthiness**

Buyer may, upon written notice to Supplier, terminate all or any part of the Purchase Contract (i) in the case of insolvency of Supplier, the filing of any application for the opening of insolvency proceedings against Supplier, the refusal of such application due to lack of assets, or the appointment of a receiver or insolvency trustee for Supplier; Supplier shall reimburse and compensate Buyer for all losses, damages, costs and expenses incurred by Buyer in connection with such insolvency event of Supplier, including, but not limited to, reasonable attorney fees; and (ii) due to a lack of Supplier's creditworthiness making it obvious that the timely and proper delivery of Products within the agreed delivery dates, periods and sequences plus a reasonable grace period cannot be effected. In the event of termination, Buyer shall, without further liability, pay the price for Products delivered prior to the termination.

## **22. Termination for Convenience**

- a) Buyer may at any time, upon written notice to Supplier, terminate any undelivered portion of any Purchase Contract. Upon receipt of Buyer's notice, Supplier shall, unless otherwise requested by Buyer, (i) terminate immediately all work under the Purchase Contract;

(ii) deliver, in accordance with the Terms and Conditions and Purchase Contract, to Buyer finished Products as well as such usable and merchantable work in progress, parts and materials which Supplier produced or acquired in accordance with the Purchase Contract and which Supplier cannot reasonably use for producing goods for itself or for others; (iii) settle all related claims of its subcontractors and (sub-) suppliers; (iv) take actions reasonably necessary to protect property in Supplier's possession in which Buyer has an interest until disposal instructions from Buyer have been received; and (v) upon Buyer's request, cooperate with Buyer to effect the resourcing of Products to an alternative supplier designated by Buyer.

- b) In the event of termination pursuant to Section 22 a), Buyer shall pay to Supplier, and Supplier shall only be entitled to, the following amounts: (i) The agreed price for all Products delivered by Supplier to Buyer prior to the termination as well as for the finished Products that conform to the requirements of the Terms and Conditions and Purchase Contract and that have not already been paid for; (ii) Supplier's reasonable actual costs for the usable and merchantable work in progress, parts and materials to be transferred to Buyer in accordance with Section 22 a); (iii) Supplier's reasonable actual costs for settling claims of its subcontractors and (sub-) suppliers, provided that the works, parts and materials provided cannot be used otherwise by Supplier; and . In no event shall Buyer's obligations exceed the agreed prices for Products. Supplier shall use its best efforts to mitigate any costs to be paid by Buyer under this Section 22 b).
- c) Within three (3) weeks after the termination pursuant to this Section 22, Supplier shall furnish to Buyer its claims under Section 22 b), together with all supporting data necessary to calculate the claims under Section 22 b). Buyer may audit Supplier's records before or after payment to verify amounts requested by Supplier.

### **23. Right to Audit**

- a) Upon two (2) days' notice, and without advance notice in urgent cases, Buyer shall be entitled to access all pertinent information for the purpose of auditing Supplier's invoices; Section 6 b) shall apply. Supplier shall preserve these documents for a period of one (1) year after receipt of the final payment under the Purchase Contract. In addition, and upon two (2) day's notice and without notice in urgent cases, Buyer shall be entitled to have access to Supplier's premises during normal business hours and without interfering with Supplier's business in order to inspect all pertinent information regarding Supplier's manufacturing process, including, but not limited to, all work, materials, inventories, parts, tools, fixtures, gages and models and other items provided under the Nomination Letter. Supplier shall segregate its records and otherwise cooperate with Buyer to facilitate the audit.
- b) Buyer may procure information regarding Supplier's financial situation and creditworthiness from industry bodies, credit agencies and similar institutions.

### **24. Competitiveness**

- a) Supplier shall assure that Products remain competitive in terms of costs, price, technology, design and quality with similar products. If, in the reasonable opinion of Buyer, Products do not remain competitive, Buyer may advise Supplier in writing of the area(s) in which another product is more competitive in terms of costs, price, technology, design and quality. Supplier shall have four (4) weeks to agree to sell Products at a more competitive price, or, if applicable, with comparable technology, design or quality. If Supplier does not agree, Buyer may terminate, upon written notice to Supplier, the Purchase Contract and purchase from another supplier without liability.
- b) Buyer and Supplier shall use their best efforts to implement cost savings and productivity improvements to reduce Supplier's costs, with the understanding that the savings (after financing) will be shared as follows: (i) Savings resulting from Buyer's ideas suggested solely by Buyer (including without limitation savings resulting from the reduction in the content of Products) shall be for the sole benefit of Buyer and (ii) savings resulting from ideas suggested by Supplier or created by Supplier and Buyer shall be equally shared.

## **25. Insurance**

- a) Supplier shall maintain insurance coverage as reasonably requested by Buyer and in any case in amounts adequate and acceptable to Buyer, in particular to protect against possible risks arising out of Products or in connection with the Purchase Contract. Supplier shall promptly provide a confirmation of coverage showing the amount of coverage, policy numbers and date of expiration and shall require the insurance company, broker or agent to give Buyer adequate written notice of any lapse or cancellation of any policy.
- b) If applicable in certain jurisdictions (e.g. U.S.A., United Kingdom), Buyer shall also be shown as an additional insured on the comprehensive general liability policy reflected on the certificate of insurance if services are to be performed on Buyer's premises.
- c) Buyer shall have the right to procure such insurance upon agreement with Supplier and Supplier shall reimburse Buyer for all costs and expenses of procuring such insurance.

## **26. Force Majeure and Labor Disruptions**

To the extent Buyer or Supplier is unable to perform its obligations under the Purchase Contract due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; pandemic; or sabotage (together, "**Force Majeure**"), as soon as possible (but no more than one (1) full business day) after the occurrence, Supplier or Buyer, as applicable, shall provide written notice describing such Force Majeure event and informing the other party of the anticipated duration of the event and the time within which the event will be cured. Supplier shall inform Buyer immediately once the Force Majeure event has been cured. Notwithstanding the above, Supplier will continue to use commercially reasonable efforts to perform to the greatest extent possible.

- a) During any delay or failure to perform by Supplier due to Force Majeure, Buyer may, without liability: (i) purchase Products from other sources and reduce its purchases from Supplier by such quantities, without liability; or (ii) terminate all or parts of the Purchase Contract.
- b) In addition, Supplier at its expense shall take all actions reasonably required by Buyer to ensure that in the event of any anticipated labor disruption, strike or similar event or resulting from the expiration of Supplier's labor contracts, an uninterrupted supply of Products to Buyer is ensured; Supplier shall immediately inform Buyer of any disruption. If, upon request of Buyer, Supplier (i) fails to provide within ten (10) days (or such shorter period as Buyer requires) adequate assurances that any disruption will not exceed four (4) weeks or (ii) informs Buyer that the disruption lasts longer than four (4) weeks, or (iii) the disruption actually lasts longer than four (4) weeks, Buyer may terminate the Purchase Contract without liability.
- c) Supplier agrees that a change in cost of materials, components or services based on market conditions, supplier actions or contract disputes with its sub-contractors and (sub-) suppliers will not be considered Force Majeure and will not excuse non-performance by Supplier, whether for commercial impossibility or otherwise.
- d) Where, due to Force Majeure, Buyer is prevented from accepting delivery of Products or performing other obligations under the Purchase Contract, Buyer may defer acceptance or performance of such other obligation for the duration of the impediment.

**27. Rights and Remedies; No Waiver**

Buyer's rights and remedies under the Terms and Conditions and Purchase Contract shall be cumulative and in addition to any other rights, remedies and implied warranties provided by law. No delay or failure by Buyer in the enforcement of any provision of the Terms and Conditions or Purchase Contract shall constitute a waiver thereof, and no waiver of any provision of the Terms and Conditions or Purchase Contract shall constitute a waiver of any other provision.

**28. Assignment**

- a) Supplier may not assign any of its rights and obligations under the Purchase Contract in whole or in part without Buyer's prior written consent. Section 12. e) remains hereto unaffected.
- b) Buyer is entitled to assign its rights and obligations, in whole or in part, to Affiliates.

**29. Notices**

All notices, claims and other communications to Buyer required to be in writing shall be sent by certified or registered mail to the address at Buyer's Plant. Supplier's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in the Terms and Conditions and Purchase Contract shall constitute a waiver by Supplier of the respective rights and remedies.

**30. Relationship of Parties**

Supplier and Buyer are independent contracting parties and nothing in the Terms and Conditions or Purchase Contract shall make either party the agent, distributor, partner, joint ventures or legal representative of the other, nor do the Terms and Conditions and Purchase Contract grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**31. Compliance with Law**

Supplier guarantees that it will comply with all applicable laws, the International Bill of Human Rights, the principles and rights set by the International Labour Organization (ILO) in its "Declaration on fundamental principles and rights at work", rules, codes, the DRÄXLMAIER sustainability policy for supplier in its latest version, regulations, orders or industry standards of the country of Buyer, the country in which the Products are manufactured and/or delivered to, and other jurisdictions in which Products, and Customer Goods, are to be sold, including, but not limited to, such laws, rules, codes, regulations, orders or industry standards that (i) relate to the manufacture, disposal, labeling, transportation, importation, exportation, licensing, approval or certification of Products, (ii) relate to environmental protection, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, (iii) relate to any relevant and applicable international laws that regulate money laundering, anti-corruption, bribery, anti-terrorism efforts, trade embargos and economic sanctions. Supplier guarantees (i) that neither it nor any of its subcontractors and (sub-) suppliers is involved in human trafficking, will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, (ii) that it and any subcontractors and (sub-) suppliers guarantee freedom of association and collective bargaining in the supply of Products including without limitation the provision of services. At Buyer's request, Supplier shall certify in writing its compliance with the foregoing. Supplier shall indemnify and hold Buyer harmless from and against any claims, liabilities, losses, damages, costs and expenses (including without limitation reasonable attorney fees) arising from or relating to Supplier's noncompliance with this Section 31.

**32. Withholding Tax**

- a) Insofar as a legal regulation requires that a withholding tax and/or any other comparable duties or levies be withheld by the Buyer in connection with the services provided by Supplier (such as delivery of goods, performance of services, licensing of rights), and these must be paid to the state or the government authority, the Buyer shall be entitled to deduct the due amount of withholding tax and/or of any other comparable duties or levies from the agreed remuneration. In such cases, the Buyer shall owe the payment of remuneration less the due amount of withholding tax and/or any other comparable duties or levies.
- b) In cases where the Buyer has already paid the gross amount of remuneration without deduction of withholding tax and/or of any other comparable duties or levies, the Supplier shall be obligated to reimburse the paid amount of withholding tax and/or any other comparable duties or levies paid in connection with the remuneration to the Buyer and shall indemnify the Buyer hereby against.
- c) To the extent that the right of collection of withholding tax and/or of any other comparable duties or levies is limited, in whole or in part, by inter-governmental agreements, the Supplier shall immediately submit all documentation (e.g. the tax residency certificate, exemption certificate) which is the necessary prerequisite for any complete or partial exemption from withholding tax to the Buyer.

**33. Governing Law, Jurisdiction and Venue**

The terms of the Purchase Contract, including these Terms and Conditions, is to be construed according to the laws of the country (state/province if applicable) of the Buyer's principle place of business as shown by the address of the Buyer on the Purchase Order, unless negotiated between the Parties in writing otherwise. The terms and conditions set forth by the United Nations Convention for the International Sale of Goods (CISG) are hereby expressly excluded.

**34. Severability**

If any provisions of the Terms and Conditions or Purchase Contract is declared or found to be unenforceable or invalid, the validity of the remaining provisions shall not be affected thereby.

**35. Modifications**

No modifications and amendments to the Terms and Conditions and Purchase Contract shall be valid or binding unless agreed to by both Parties made in writing. This also applies to the cancellation of this written form requirement.