

# General Terms and Conditions of Purchasing of COMET AG

## Version dated October 2018

These General Terms and Conditions of Purchasing are available on the internet under the following address: [www.comet-group.com](http://www.comet-group.com).

### 1 EXCLUSIVE APPLICATION, BINDING FORCE

1.1 These General Terms and Conditions of Purchasing ("AEB") govern any and every contract ("Contract") between COMET AG ("COMET") and its supplier to the Contract ("Supplier") for the purchase of goods and services ("Service" or "Services") unless otherwise agreed in writing. In particular, deviating terms and conditions in the Global Supplier Agreement or in an order have priority over the provisions of these AEB. Application of Supplier's general terms and conditions of business is excluded.

1.2 The Supplier accepts these AEB by submitting a quotation or by accepting an order or by confirming an order from COMET.

1.3 The order number, reference and date of the Contract from COMET must be shown on all written documents, including invoices.

### 2 QUOTATION

Quotations are non-binding and free of charge for COMET in all cases, even if they have been submitted in response to a query. The Supplier shall observe the requirements of quantity, quality, duration, submission deadline and execution as stated in the query or the tender announcement and expressly point out any deviations. The Supplier is bound by the quotation for a period of 90 days.

### 3 ORDER

3.1 Orders and engagements are binding solely if they have been issued or confirmed in writing by COMET or by a company acting on behalf of COMET. This provision applies to electronically submitted orders as well. The Supplier shall request presentation of a power of representation issued by COMET from companies acting on behalf of COMET.

3.2 The Supplier shall issue a written confirmation of any orders without delay. COMET reserves the right to cancel the order if the confirmation has not been received within the period stated in the order.

3.3 If and when the Supplier deviates from the order in its order confirmation, it is obligated to point out the deviation immediately. If COMET does not accept any such deviations expressly and in writing, COMET's order remains authoritative without change.

3.4 COMET has the right to request changes in the Supplier's Service or the scope of the Service at any time. The Supplier shall notify COMET in writing of any consequences (costs, deadlines, quality, security, etc.). The execution of the change is subject to COMET's prior written consent.

### 4 SUBCONTRACTING

4.1 If the Supplier intends to engage third parties to perform part of the Service, it must obtain COMET's written consent in advance and in good time for every individual case. The proposed subcontractors must be designated by name to COMET. If the Supplier secures advantageous terms and conditions by subcontracting the Service, the Supplier is obligated to present them to COMET. COMET has the right to claim the advantageous terms and conditions, with or without reservations, for itself in mutual agreement.

4.2 Upon COMET's request, the Supplier shall prove that it has paid for the subcontractor's service in full or has provided corresponding securities. Otherwise, COMET is entitled to retain the corresponding payments to the Supplier.

4.3 These AEB apply to the subcontractor's services in the same scope as to the Supplier. The Supplier's responsibility for the overall Service is not affected by the subcontracting. The Supplier is liable for the partial services obtained from the subcontractor to the same extent as for its own Services.

### 5 ACCEPTANCE

5.1 If COMET has noted the performance of an acceptance procedure for Services in the order, the Supplier's Service will be deemed accepted if and when COMET has declared in writing, pursuant to Subsection 5.2, that the Services have been performed in conformity with the Contract. The documentation and the agreed test records belong to the acceptance in every case.

5.2 The acceptance procedure is conducted in accordance with COMET's instructions/specifications and is documented in the form of an acceptance record.

### 6 DOCUMENTS, CONFIRMATIONS, CERTIFICATES

6.1 Upon COMET's request, a documentation portfolio including all of the required maintenance and operating

instructions, confirmations, certificates and any and all other documents for utilisation in conformity with the Contract shall be compiled and handed over to COMET at the latest during the acceptance procedure.

6.2 This documentation is a part of the Supplier's Service and consequently a prerequisite for payment by COMET. No additional charges may be billed for the compilation of the documentation.

### 7 PRICES

7.1 The agreed price is a fixed price excluding value-added tax and includes any and all supplementary services. Any applicable value added tax must be itemised separately.

7.2 Unless otherwise agreed in writing, no compensation for increased expenses will be paid after submission of the order.

7.3 Additional costs will be accepted solely after prior written agreement and corresponding additional order from COMET or from a company acting on behalf of COMET. Requests for additional costs require a transparent, plausible and substantiated detailed list and itemisation of the costs.

7.4 Upon COMET's request, the Supplier will provide a corresponding itemisation of the costs, disclosing as a minimum the material costs, manufacturing costs, surcharges and one-time charges. This provision applies in particular, but is not limited to, the manufacture of customised products.

### 8 DUE DATE AND PAYMENT METHODS

Unless otherwise agreed in writing, payment will be made within 45 days of receipt of the invoice, but at the earliest after the declared acceptance or the quality inspection of the Service pursuant to Section 5.

### 9 PERFORMANCE OF SERVICE AND CONSEQUENCE OF DELAY

9.1 The failure to comply with agreed delivery dates (expiry-date business) automatically results in Supplier's default. In all other cases, the Supplier is in default upon receipt of a warning notice from COMET in compliance with a reasonable subsequent period.

9.2 If and when the Supplier must assume that the Service, in whole or in part, cannot be performed at the agreed

time, it shall submit written notification without delay, stating the reasons for the delay and its presumed duration.

**9.3** If and when the Supplier is in default, it owes a payment of 1% (but not exceeding 10% in the aggregate) of the value of the delayed performance for each and every week of default. If and when the Supplier is in default of delivery of a part of the Service, the rates of the payment will be calculated on the price of the total Service unit the Supplier is to perform and for which the operational startup or further processing is hindered by the default of the partial delivery. These payments do not release the Supplier from performance of its other contractual obligations, but they will be offset against any damages that must be paid. COMET will on principle offset the payment of the default penalty against its payment to the Supplier and deduct the amount from the Supplier's invoice.

## 10 PACKAGING, SHIPPING

**10.1.** Packaging, preservation and labeling of the delivery items shall be performed by the Supplier in accordance with the contractual specification and otherwise in accordance with applicable industry standards and legal provisions. In particular, the Supplier shall ensure that all types of wood packaging, as well as wooden pallets used for packaging or transport, comply with the requirements of the applicable International Standards for Phytosanitary Measures (International Standards for Phytosanitary Measures) Nr. 15. If and when the transport requires special care in the packaging and means of transport, this will be pointed out to COMET. All components of the consignment must be labelled unambiguously and durably/permanently (order no., article no., product designation).

**10.2** In the absence of a mutual agreement, the INCOTERMS 2010 apply.

## 11 PASSING OF RISK / INSURANCE

**11.1** Unless otherwise agreed in writing, use and risk pass to COMET upon the passage of title of the consignment, i.e. upon its arrival at the destination.

**11.2** If and when the Supplier is obligated to perform works, labour or contractual services, use and risk pass to COMET upon the acceptance pursuant to Section 5.

**11.3** If the requested shipping documents have not been issued properly for a consignment, the consignment will be stored at the Supplier's expense and risk until the documents have arrived.

## 12 WARRANTY

**12.1** The Supplier, in awareness of the intended purpose of its Services, warrants that the Services are in conformity with the agreed material and legal characteristics and are suitable for the presumed use, that they are in compliance with applicable laws and regulations and that the Services have been performed professionally in compliance with any and all required safety and security measures. If and when verifications, test reports and similar documents are a part of the agreed scope of the Service, the information contained therein shall be deemed warranted.

**12.2** If and when official permits are required for the performance of the Service, the Supplier shall, in the absence of contrary written agreement, obtain or secure any such permits at its own expense. It is also liable for the compliance of the performance of the Service with legal provisions, in particular regarding occupational safety and recognised rules related to safety.

**12.3** COMET is released from the obligations of immediate inspection and submission of complaints pursuant to Art. 201 OR [Swiss Code of Obligations]. The Supplier waives the plea of delay in the submission of complaints, and COMET may submit complaint of defects at any time during the entire warranty period.

**12.4** The warranty period is 24 months from the date of delivery. The warranty period for replaced or repaired parts begins anew upon their delivery. The warranty includes material or legal defects of the product as well as the lack of warranted or presumed characteristics.

**12.5** If and when defects or the lack of warranted characteristics appears, COMET is entitled, at its own discretion, to request remedy of the defects or delivery of defect free replacement, to reduce the price or to rescind the Contract. If the Supplier is in default of the remedy of the defect or in urgent cases, COMET may remedy the defect itself, or cause the defect to be remedied, at the Supplier's expense and risk. It reserves the right to assert any and all claims for damages.

**12.6** COMET is entitled to rescind the Contract, effective immediately, and to waive fulfilment in the following cases in particular:

- If the Supplier is in default of performance of the Service or the warranty fulfilment and a reasonable subsequent period has also expired fruitlessly;

- If it becomes apparent before the due date that the Service, through no fault of COMET, will not be performed on time

and that the Supplier will not secure the requirements for on-time delivery within a reasonable period;

- If it becomes apparent before the due date that the object of the Service will not, through no fault of COMET, be suitable for the contractually presumed use or that it will not feature the contractually defined properties and that the Supplier will not provide a remedy within a reasonable period;

- If the Supplier or a sub-supplier is insolvent, its bankruptcy is imminent or bankruptcy proceedings, administration proceedings or foreign bankruptcy proceedings have been initiated against its assets;

- If the Supplier is in breach of the provisions in Section 16 regarding compliance and business ethics and in Section 17 regarding confidentiality.

## 13 LIABILITY

**13.1** The Supplier is liable for any and all damage or loss that result from the defectiveness of the Service. It is liable for any and every fault as well as actions of its vicarious agents, subcontractors, sub-suppliers and any other third parties engaged for fulfilment of the Contract. The Supplier is furthermore liable for the loss of and damage to materials supplied by COMET (Subsection 14.4).

**13.2** The Supplier is obligated to maintain adequate insurance cover for any personal injury and material damage caused by the Supplier itself or its employees, subcontractors, sub-suppliers and any other third parties engaged for the fulfilment of the Contract.

**13.3** The Supplier indemnifies and holds COMET harmless in full from and against any and all third-party claims related to the products or services pursuant to product liability, environmental protection and protection of intellectual property. COMET is obligated to notify the Supplier without delay of any substantiated claims asserted against COMET.

## 14 INTELLECTUAL PROPERTY RIGHTS AND PROVISION OF MATERIAL

**14.1** Any and all previously held intellectual property rights (including, among others, rights to documents such as plans, drawings, technical documentation, software etc.) remain with COMET or the Supplier as the respective owners. The Supplier may use any and all documents and any and all information related thereto received from COMET solely for the purpose of processing the orders; it is not entitled, without COMET's prior written consent, to manufacture products for third parties on the basis of such documents and information or to copy, reproduce or in

any way make such documents and information available to third parties, in whole or in part. Upon request, any and all provided documents, including copies and reproductions, shall be surrendered without delay.

**14.2** Any intellectual property rights arising from the fulfilment of the Contract, in particular, but not limited to, rights related to the works, concepts, documentation etc. prepared by the Supplier exclusively for COMET accrue to COMET in the absence of contrary contractual agreement. Both parties remain entitled to use and dispose of any ideas, procedures and methods that are not legally protected.

**14.3** The Supplier warrants that its Services and the use of its Services by COMET do not infringe on any patents or other third-party intellectual property rights. Should there nevertheless be an infringement of any such rights, the Supplier is obligated, at COMET's option, either to modify the Service in such a way that it can be utilised by COMET in accordance with the Contract without infringing on any third-party rights or to indemnify and hold COMET harmless for any and all possible claims related to the infringement.

**14.4** Any and all materials provided by COMET to the Supplier remain the property of COMET without any restrictions. The Supplier is obligated to treat any such provided materials with the care given to its own property and to undertake any and all reasonable security measures to prevent the loss of, worsening of or damage to the materials. Provided materials may be used solely for the Services for COMET. Provided materials shall be stored separately and labelled as the property of COMET.

## **15 PERMITS AND EXPORT REGULATIONS**

**15.1** The Supplier will continuously obtain information regarding national and international export regulations and will notify COMET without delay if the Services are governed, in whole or in part, by any such regulations. It will comply with any and all applicable export regulations and, upon request, will disclose to COMET any and all relevant information. This obligation survives the expiration of the term of the Contract.

**15.2** The Supplier will undertake any and all actions necessary to obtain any official permits or licences required for the performance of the Service and its intended use.

**15.3** In any case, the supplier will provide COMET with the following information on the packing list and (if applicable) the customs invoice: the country of origin, the corresponding export classification numbers including

ECCN and the harmonized tariff codes for each delivery item. The information is provided at a level of detail that meets the requirements of any applicable trade agreement or customs agreement.

## **16 COMPLIANCE AND BUSINESS ETHICS**

**16.1** The Supplier will comply with any and all applicable legal standards, in particular, but not limited to, competition and cartel laws, with labour and child protection provisions, with the prohibition of trafficking in women and the core conventions of the International Labour Organisation, with the restrictions on the use of certain dangerous substances in electric and electronic devices (EU Directive 2011/65/EU, RoHS Directive), with the provisions concerning the registration, evaluation, approval and restriction of chemicals (Regulation (EC) No. 1907/2006, REACH) and with the provisions prohibiting forgeries and for the protection of the environment and health, and will not utilise any conflict commodities.

**16.2** The Supplier covenants not to accept any financial or other benefits if and when the giver expects or is granted an unjustified advantage in return. It also covenants to observe analogously the agreement of 17 December 1997 concluded within the framework of the OECD regarding the combating of bribery of foreign officials in international business in its private business transactions.

**16.3** The Supplier will obligate contractually its employees, subcontractors, sub-suppliers and any other third parties engaged for fulfilment of the Contract to compliance with this provision.

## **17 CONFIDENTIALITY**

**17.1** Information provided by COMET to the Supplier for performance of the Service may not be used for other purposes, reproduced or disclosed to third parties. Upon request, any and all documents that have been provided, including copies and reproductions, shall be surrendered without delay or destroyed. The Supplier shall confirm in writing the destruction.

**17.2** Any and all information disclosed by COMET shall be treated as strictly confidential. The Supplier shall ensure that this obligation is also observed by its vicarious agents and contracted sub-suppliers as well as any and all other third parties engaged for fulfilment of the Contract. In special cases, a separate, detailed non-disclosure agreement will be concluded.

## **18 INFORMATION AND DISCLOSURE OBLIGATIONS**

**18.1** Comet has the right to obtain

information about the status of the performance of the Service at any time.

**18.2** The Supplier shall notify COMET of any and all circumstances that may put COMET's interests at risk.

**18.3** The Supplier is obligated to notify COMET of any relevant experience related to the performance of the Service.

## **19 SEVERABILITY**

Should individual provisions of these Terms and Conditions of Purchasing be invalid or become unenforceable, in whole or in part, the effectiveness of the remaining provisions of the Terms and Conditions of Purchasing or of the separate Contracts will not be affected. The parties covenant to replace the unenforceable or invalid provision with a regulation that comes closest to the commercial intent of the unenforceable or invalid provision.

## **20 GOVERNING LAW AND VENUE**

**20.1** The contractual relationship is governed by Swiss law under exclusion of the United Nations Convention on the International Sale of Goods of 11 April 1980 ("Vienna Convention").

**20.2** Sole and exclusive venue for any and all disputes arising from the contractual relation is Bern, Switzerland, subject to COMET's unilateral right to file its claims against the Supplier at any other venue having jurisdiction