



General Terms and Conditions of Purchase

1. General

(1) For all contractual relations, for the delivery of products as well as for the provision of services of any kind, especially within service and work contracts, between the Supplier and PHOENIX TESTLAB GmbH - hereinafter "Customer" – the following terms and conditions of purchase shall apply exclusively. The delivery of products as well as the services shall hereinafter be jointly designated as "Contractual Products". Any provisions that oppose or deviate from these Terms and Conditions of Purchase shall not be accepted by Customer unless Customer expressly agrees to the validity of these provisions in writing. The Terms and Conditions of Purchase of Customer shall also apply if Customer accepts the Contractual Products without reservation and/or pays for them in awareness of adverse provisions of the Supplier or provisions of the Supplier deviating from the Terms and Conditions of Purchase of the Customer.

Customer shall be entitled to withdraw from the individual agreement in the event the Supplier expressly disagrees with the Terms and Conditions of Purchase. In such a case claims on the part of the Supplier shall be excluded.

(2) The Terms and Conditions of Purchase of Customer shall also be applicable for all future individual agreements with the Supplier.

2. Secrecy

The Supplier undertakes to keep all illustrations, drawings, calculations or any other documentation, especially all information transmitted in writing, in text form or verbally, strictly confidential; they may only be disclosed to third parties with the express written consent of Customer. The obligation of secrecy shall also apply after the respective individual agreement has been processed. It shall expire when and as far as the confidential information contained in the submitted information and in the submitted illustrations, drawings, calculations and any other documents is in the public domain. Performing agents and vicarious agents shall also be committed to secrecy by the Supplier.

3. Prices, Shipment, Packaging

(1) The prices agreed in the respective individual agreement shall be fixed prices including any incidental costs plus statutory turnover tax, and exclude additional claims of any kind. If no prices are agreed in the respective individual agreement, Customer shall not owe any remuneration for the performance or delivery rendered by the Supplier.

(2) Dispatch notes, letters of consignment, invoices and any correspondence shall include the order number of Customer.

(3) Customer shall only accept volumes or quantities he has ordered. Over or under deliveries or part deliveries are only acceptable upon prior agreement with Customer.

(4) The delivery or performance of the Supplier shall be DDP (Incoterms 2010) to the shipping address and/or place of delivery indicated by Customer in the respective individual agreement.

(5) The Supplier's obligation to take back the packaging shall be subject to the statutory provisions.

The Supplier undertakes to pack the contractual products in such a way that transport damages are avoided. Packaging material may only be used to the extent as needed for obtaining this objective. The Supplier may only use environment-friendly packaging material. The regulations on § 11 clause 3 shall apply accordingly.

4. Delivery Period

(1) The delivery dates agreed in the respective individual agreement are binding. Relevant for compliance with the delivery date or delivery period shall be the receipt of faultless contractual goods at the shipping address indicated by

Customer and/or place of delivery specified by Customer or the complete and unreserved acceptance through Customer.

(2) If the Supplier realizes that an agreed deadline or the agreed quality cannot be maintained for whatever reasons he shall immediately inform Customer about it in writing, stating the reasons and the expected duration of the delay. In the event the Supplier exceeds the delivery date agreed in the respective individual agreement ("Default") he shall pay Customer a lump-sum compensation in damages amounting to 0,5 % of the contractual goods' value of the respective individual agreement per commenced calendar day of the missed deadline, on the whole, however, at most 5 % of the contractual goods' value of the individual agreement unless the Supplier is not responsible for the delay and/or the Supplier can prove a minor damage or lack of damage.

Further claims for damages (damage caused by delay) shall remain unaffected. In this case the lump-sum compensation in damages shall be credited against any further claims for damages due to the delayed performance.

(3) Following the fruitless expiry of a grace period set by him, Customer shall also be entitled to claim compensation in damages instead of performance and to withdraw from the respective individual agreement. In addition, Customer shall in every case be entitled to continue to claim the delivery/performance of the Supplier and to assert the damage caused by delay in addition.

(4) Furthermore, Customer shall be entitled to statutory claims in the event of delay on part of the Supplier.

(5) The unconditional acceptance or unconditional payment of the delayed delivery or performance shall not contain a waiver of claims to which Customer is entitled due to the delayed delivery or performance

(6) Should documents or information of Customer be necessary for the respective fulfilment of the agreement, which Customer did not hand over to the Supplier, Supplier may only invoke contributory negligence of Customer in the delay of delivery if he sent a reminder in writing concerning the documentation and information and has not received them within a reasonable period of time.

(7) In the event the Supplier delivers the contractual goods before the agreed delivery date, Customer shall reserve the right to refuse acceptance or return them at the expense of the Supplier. If the contractual goods are not returned or if acceptance is not refused after a delivery ahead of schedule, Customer shall store the contractual goods at the expense and risk of the Supplier until the date of delivery. In any event, the payment deadline shall only commence at the agreed delivery date.

5. Force Majeure

(1) Force Majeure acc to these Terms and Conditions of Purchase and in accordance with the respective individual agreement shall only be an external event introduced from the outside by natural forces or by actions of third parties that is unforeseeable by human judgement and experience, cannot be prevented or rendered harmless with economically bearable means even with the utmost care that can be reasonably expected according to the circumstances, and which must not be accepted by the company because of its frequency like, for instance, war, war risks and natural disasters.

(2) Force majeure shall exempt the contractual partner affected by force majeure from his obligations of contractual performance for the duration of the interference and to the extent of its impact. The affected contractual partner undertakes to make every reasonable effort to immediately provide the required information, and adjust his obligations to the modified conditions in good faith.

Customer shall be fully or partially exempt from the obligation to accept the contractual products and insofar be entitled to withdraw from the Agreement if the delivery/performance is no longer utilizable at his place or cannot be expected from him anymore owing to the delay caused by force majeure – by considering the economic aspects.

6. Invoicing, Payments and Assignment of Claims

- (1) Following the delivery, invoices shall be addressed to Customer in full by separate mail in accordance with the respective statutory provisions and in proper form with all related documentation and data. Only after receipt of a proper invoice, meeting the requirements according to sentence 1, Customer shall be obligated to pay the contractual products within the agreed payment target.
- (2) Payment shall be made in the customary manner within 14 calendar days with 3 % discount; 30 calendar days with 2% discount or after 60 calendar days strictly net, calculated after delivery/performance and date of receipt of invoice.
- (3) In the event of faulty delivery/performance Customer shall be entitled to withhold payment proportionate to value until proper fulfillment.
- (4) Customer shall exclusively default in payment under the respective individual agreement upon previous written reminder from Supplier.
- (5) With advance payments, the Supplier is obligated upon initial request of Customer to provide an adequate security, eg unlimited directly enforceable suretyship in the amount of the advance payment.
- (6) As far as material test certificates (eg acceptance test certificates) have been requested in the respective order of Customer, Contractor undertakes to hand over these certificates to Customer together with or before the delivery of the respective contractual products.
- (7) An assignment of claims to third parties through the Supplier or a collection of the claims through third parties shall be inadmissible.
- (8) Customer shall be entitled to offset claims of the Supplier also against claims from other companies of Customer considering the value date.

7. Provision of Materials and Parts

Customer shall reserve the right of ownership of all parts and components provided free of charge or sold to the Supplier. The parts and components provided by Customer shall exclusively serve for processing and fulfilling the respective individual agreement with Customer. In particular, the Supplier is expressly forbidden to resell them. In case of a decrease in value or loss of the parts and components, Supplier must provide compensation for damages. Customer shall reserve the right of ownership of the provided parts and components even after processing and assembly through the Supplier.

8. Acquisition of Ownership of Customer

Immediately after the delivery/transfer of the contractual products Customer shall become owner of these goods.

9. Warranty/Guarantee

- (1) Supplier shall guarantee and warrant that all contractual products comply with state-of-the-art technology, the relevant, worldwide statutory provisions, standards, regulations, provisions and directives set forth by authorities as well as the EC, professional associations and trade associations. Furthermore, the Supplier shall guarantee and warrant that all contractual products are free of faults, comply with the requirements of Customer and are suitable for the respective application purpose as well as the place of application. In the event the Supplier wants to deviate from the aforementioned provisions as well as requirements he needs to obtain the written consent of Customer in advance. The warranty claims shall not be affected by this consent.

- (2) The Supplier shall assume a durability warranty for the contractual products pursuant to § 443 German Civil Code (BGB) by which the Supplier shall guarantee that the contractual products are free of any quality defects and deficiencies in title for a period of two years starting with the transfer of risk.
- (3) An incoming-goods inspection of the contractual products through Customer shall be restricted to an inspection whether the delivered contractual products correspond to the ordered quantities by piece number; have apparent, externally visible transportation damages and whether the delivered contractual products correspond to the ordered contractual products (identity). For these aforementioned defects a complaint period of 2 weeks shall be applicable. For all other open defects as well as hidden defects a complaint period of 2 weeks upon discovery shall be effective. Any further obligations of complaint and inspection on the part of Customer shall be excluded.
- (4) Defects rephended during the warranty period, which also include the non-attainment of guaranteed properties, must be eliminated by the Supplier immediately and cost-free upon request, including any additional costs, at the option of the Customer by means of rework or subsequent delivery (supplementary performance) or reimbursed by means of a credit of the purchase price/remuneration. In urgent cases or with small defects Customer may himself carry out the rework or have it done by third parties, without this restricting the rights of Customer under the warranty. Customer shall be entitled to invoice the costs incurred to him within this rework. After fruitless expiry of a period of grace set by Customer for rework or supplementary delivery, Customer shall be entitled to all statutory rights, especially withdrawal, reduction, reimbursement of expenses and compensation in damages instead of performance. With work performance, the Customer is additionally entitled to the right of self-performance. As for the rest, the Supplier undertakes to compensate all damages accrued to Customer through a defective contractual product even without a previously set deadline.
- (5) The Supplier shall bear all expenses needed for supplementary performance, especially costs of travel and transportation, labour and material (§ 439 II German Civil Code (BGB)).
- (6) In the event of claims for subsequent performance of Customer towards the Supplier according to § 9 clauses 4, 5 as well as § 439 II German Civil Code (BGB), the Supplier shall reimburse Customer especially for the following costs for labour and material in a lump-sum to the amount of:
 - a) lump sum for reminders or any other letters:
5,00 € per letter
 - b) telephone lump sum:
3,00 € per phone call
 - c) lump sum for copies:
0,50 € per copy
 - d) travelling expenses
0,50 € for every driven kilometre
 - e) labour expenses
50,00 € per working hour and employees
 The labour expenses shall be invoiced per commenced quarter of an hour. Customer shall be expressly entitled to claim higher damages.
- (7) The warranty period shall be 36 months after delivery to the client of Customer, at the most, however, 48 months after transfer of risk to Customer unless explicitly agreed otherwise or the law provides longer periods. It shall begin with the transfer of the contractual product to Customer or third parties appointed by Customer at the delivery address and/or place of delivery specified by Customer.
- (8) With devices, tools, machines and systems, the warranty period shall begin with the complete and unconditional as well as written acceptance of the contractual product. The acceptance may also be refused by Customer due to minor

defects. The contractual products shall not be deemed accepted in the event of payment – even with unconditional payment – the putting into use, the use or the start-up through Customer. § 640 clause 1 sentence 3 German Civil Code (BGB) (fiction of acceptance) shall in particular not be applied within the individual agreements.

- (9) For contractual products that could not be used and/or operated during the inspection of a defect and/or remedy of defects, a current warranty period shall be extended by the time of the interrupted operation.
For repaired or newly delivered contractual products, the warranty period shall recommence on completion of rectification or, if an acceptance was agreed, on acceptance.

10. Series defects

- (1) Series defects are defects in which materials, components, part systems or systems have an error frequency that clearly lies outside the usually expected values or the values indicated by the Supplier. A series defect within the Terms and Conditions of Purchase as well as the respective individual agreements especially exists when the number of objected contractual products exceeds 1% of the respective delivered batch.

In this case the Supplier has to present an action plan for remedying the defects and implement it at his expense. This action plan must contain measures that compensate the expected behaviour of other components of this series due to the similarity of the occurred errors. If there is a series defect, Customer may demand the exchange of all contractual products of this series. If the contractual products of the Supplier in this connection are built into another product Customer shall also be entitled to recall the products of the Supplier. In this case the Supplier has to replace all costs and expenses at the first request. Customer may assert the regulation of this point within the warranty period or if the error rate indicated by the Supplier is exceeded. As for the rest, Customer shall be entitled to the full statutory warranty claims for all contractual products affected by a series defect in the event a series defect exists.

- (2) Any further or other statutory claims shall remain unaffected

11. Quality and Environment

- (1) Supplier shall maintain a quality and environment management system of an adequate type and scope that complies with state-of-the-art technology.

Supplier undertakes to conclude a corresponding quality assurance agreement with Customer if the latter deems this necessary.

- (2) Supplier undertakes to use environment-friendly products and processes with the contractual products and also in supplies or additional services from third parties within the scope of economic and technical possibilities.

- (3) Supplier shall be liable for environmental compatibility of the contractual products and packaging material and for all consequential damages resulting from his failure to comply with the statutory duty to dispose.

Upon first request of Customer, the Supplier shall issue a certificate of inspection for the contractual products.

- (4) Supplier undertakes to include the safety data sheets valid for the contractual products into the respective delivery as far as Customer does not already have the current safety data sheet for the respective contractual product. Regardless of the delivery of contractual products, the Supplier shall ensure that Customer is provided with the respective up-dated safety data sheet for the already delivered contractual products. The Supplier shall indemnify Customer against all recourse claims by third parties in case he fails to deliver the safety data sheets to Customer or if he delivers them late or faulty.

- (5) Supplier undertakes to observe banned substances and restrictions as well as herewith connected obligations to inform and take back in accordance with all applicable inter-

national, european and national statutory provisions, guidelines and directives, in particular ROHS-Directive (2002/95/EC), WEEE Directive (2002/96/EC) and REACH Regulation (EC Nr. 1907/2006). The Supplier shall immediately inform Customer in writing about the composition of substances of his contractual products after he has obtained the information or upon request of Customer.

The Supplier shall guarantee that the substances indicated in the respective applicable statutory provisions, guidelines, regulations and Customer's own lists of banned and avoidable substances are not contained in his contractual products or at least not in a higher concentration than approved. This shall especially apply to the substances of the candidate list of the REACH Regulation as amended from time to time.

The Supplier shall be liable for any violation of this agreement and indemnify Customer against any claims upon initial request as well as compensate any damages which originate directly or indirectly from the violation of this agreement.

- (6) As for the rest, the Law on Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment (Electrical and Electronic Equipment Act – ElektroG) as amended from time to time shall be applicable.

12. Traceability

By identifying the contractual products or, if this is impossible or unsuitable, by other suitable measures, the Supplier shall ensure that if a defect occurs on the contractual products he can immediately determine which other contractual products might be affected as well. The Supplier shall inform Customer about his identification systems or any other measures in such a way that Customer can make his own conclusions to the necessary extent. Upon request of Customer the Supplier shall observe the application of the ZVEI Guideline "Identification and Traceability in the Electrical and Electronics Industry" as amended from time to time and confirm this in writing.

13. Product Liability

- (1) To the extent defects of the contractual products manufactured by the Supplier lead or might lead to a damage to persons (life and limb, body and health) and/or a damage to the property of Customer, or performing agents or employees of Customer or any other third parties, the Supplier undertakes to indemnify Customer against claims for damages by third parties upon initial request.

- (2) In this context the Supplier shall also undertake to reimburse any expenses acc to §§ 683, 670 German Civil Code (BGB), especially costs for retrofitting and repair, subsequent delivery and the installation and removal of the corresponding contractual products, resulting from or in connection with a recall campaign carried out by Customer. Customer shall be entitled to carry out a recall without the approval of the Supplier at his own discretion and at the expense of the Supplier. As far as possible and reasonable, Customer shall inform the Supplier about the content and extent of the recall measures to be taken and give the Supplier an opportunity to comment.

- (3) Supplier undertakes to maintain a factory insurance and extended product liability insurance including a recall cost insurance for a reasonable amount. If Customer is entitled to more extensive damage claims beyond the insurance coverage, said rights shall remain unaffected. Upon initial request of Customer the Supplier undertakes to hand over the insurance policy and his certificate of insurance.

14. Industrial Property Rights

- (1) The Supplier shall guarantee that the contractual products are free of any industrial property rights or copyrights, the so-called third party industrial property rights, and that to his knowledge there are no other rights that restrict or exclude a use. The Supplier shall guarantee that the delivery

- and use of the contractual products will not violate any patents, licences or other property rights of third parties.
- (2) The Supplier shall indemnify Customer and his clients against any claims by third parties concerning violations of industrial property rights upon first request and bear all costs and expenses arising to Customer in this context.
 - (3) Customer shall immediately be entitled to obtain the approval for using the respective contractual products as well as a licence for using the respective contractual products from the party holding such rights at Supplier's expense.
 - (4) In the event claims are made against Customer by third parties on the grounds that contractual products delivered by the Supplier are in breach of industrial property rights and in the event the use is hereby impaired or forbidden, Customer shall immediately be entitled to obtain the approval for using the respective contractual products as well as a licence for using the respective contractual products from the party holding such rights at the Supplier's expense. Immediately afterwards the Supplier shall either modify the respective contractual products in coordination with Customer at the discretion of Customer in the event of being held liable in such a way that they are excluded from the area of protection but nevertheless correspond to the statutory provisions or obtain the permanent authorization for their use as stipulated by the contract in an unlimited way or without additional costs for Customer.
 - (5) The right of Customer to withdraw from the Agreement as well as the recourse to any other statutory claims through Customer, however, shall not be affected by the foregoing provision.
 - (6) As for the rest, § 9 clause 7 shall apply accordingly.
- 15. Liability/Further Claims of Damages**
The Supplier shall be liable without limitation towards Customer regardless of the type of violation of duties, especially under warranty, impossibility and tort, for each negligence and criminal intent. Limitations made exclusions of liability of any kind are herewith expressly contradicted.
- 16. Corporate Responsibility**
Within his corporate responsibility the Supplier commits himself that in the production of products and/or the provision of services human rights are protected, labour standards are observed and discrimination as well as forced labour and child labour shall not be permitted. The Supplier confirms that he will neither tolerate any kind of corruption or bribe nor get involved in it in any way. The Supplier undertakes to comply with the contents of the respectively valid Code of Conduct of ZVEI (German electrical and electronic manufacturers' association). Customer shall provide the Supplier with this Code of Conduct upon initial request.
- 17. Transmission of Order/Transfer of Agreement/Change of Company**
- (1) The Supplier shall not be entitled to pass on rights and duties fully or partially under the respective individual agreement to third parties without the prior written approval of Customer. If Customer grants the approval the Supplier alone shall remain responsible for the fulfilment of the Agreement.
 - (2) The Supplier shall immediately notify Customer about every transfer of agreement occurred by operation of law as well as any legal succession and every change of company.
- 18. Data Protection**
Customer shall treat personal data of the Supplier in accordance with the Federal Data Protection Law.
- 19. Place of Performance**
Unless otherwise expressly agreed the place of performance for the delivery and service obligation shall be the address for shipment and/or place of delivery requested by Customer; for all other obligations of both parties the domicile of the respective Customer.
The risk of accidental destruction and accidental deterioration shall only be passed on to Customer with the acceptance or transfer at the place of performance.
- 20. Cessation of payment, Insolvency**
If a Supplier ceases to pay a provisional insolvency administrator shall be appointed, insolvency proceedings are opened up over his assets or if there are protests of a bill or protests of a cheque against him Customer shall be entitled to withdraw fully or partially from the Agreement without compensation, without this giving way to any claims against Customer.
If Customer withdraws from the Agreement the contractual products shall only be settled at contractual prices as they can be used by Customer in accordance with their designated use. The damages caused to Customer shall be considered in the settlement.
- 21. Written form**
To the extent that a declaration has to be made "in writing" or "in written form", this declaration must be signed by the person or persons entitled to proper representation of the respective contractual partner by his own hand in his own name and transmitted to the other contractual partner as original or as telefax or by electronic statement (eg e-mail, EDI) without personal signature unless the written form is regulated differently in the individual agreements.
- 22. Contractual Language, Correspondence**
Contractual language shall be German or English. Any correspondence and all other documents shall be written in the German or English language. This shall also apply to the whole remaining documentation, eg for down-payment guarantees and performance bonds.
In as far as the contractual partners should make use of another language besides that, the German and/or English wording shall take precedence.
- 23. Deviating provisions when ordering construction work**
Provided that construction work is subject of the order the VOB/B (Construction Contract Procedures Part B) as well as §§ 1 to 22 and §§ 24, 25 of this General Terms and Conditions of Purchase shall be effective with the following restrictions:
- (1) Provided that the parties have concluded a unit price contract the settlement shall be by quantity in accordance with the provisions of the agreement. The fixed price agreement pursuant to § 3 clause 1 of these General Terms and Conditions of Purchase shall than only refer to the respective unit prices.
 - (2) § 4 clause 2 shall not apply when ordering construction work. Instead, the following provision shall be effective: If the Supplier fails to meet the completion date for reasons attributable to him the following penalty shall be deemed agreed: For every contract-for-work default of the completion of the contractual performance the Supplier shall owe Customer 0.2% of the net lump-sum fixed price and/or the provisional total price in case of a unit-price contract per working day. The penalty shall at most (in total) amount to maximally 5% of the net lump-sum fixed price and/or the provisional total price in case of the unit-price contract. The reservation of penalty must not be declared during the acceptance. It is sufficient that the penalty is asserted at the due date of the final payment. The claim of Customer to compensation of a damage beyond the penalty shall remain unaffected. Penalties paid by the Supplier shall be offset against the claims for damages. If during construction contractual deadlines that were agreed or mutually determined subsequently are modified the penalty does not need to be newly negotiated, instead the aforementioned provisions shall also apply.

- (3) § 4 clause 3 does not apply when ordering construction work.
- (4) In the event Customer is entitled to retain payment in accordance with § 6 clause 3, then § 641 clause 3 German Civil Code (BGB) shall be effective.
- (5) § 9 (Warranty/Guarantee) shall be deleted without replacement. As far as nothing deviating is regulated in the construction order, the warranty provisions of VOB/B (Construction Contract Procedures Part B) shall be applicable with the exception of the warranty period. This period shall be five (5) years for construction work from the acceptance through Customer. In any event, the construction work has to be accepted formally.
- (6) The § 10 (Series Defect), § 11 (Quality and Environment), § 12 (Traceability) and § 13 (Product Liability) shall not be applied when ordering performance.
- (7) § 20 (Cessation of Payment, Insolvency) shall be applied with the provision that in such cases, Customer is entitled to terminate the agreement instead of withdrawing from it.

24. Place of jurisdiction/applicable law

- (1) Exclusive place of jurisdiction shall be the domicile of the respective Customer if the Supplier is a merchant. However, Customer shall reserve the right to assert his claims at any other valid place of jurisdiction.
- (2) In addition, exclusively non-unified German law shall be applicable, notably the BGB/HGB (German Civil Code/German Commercial Code). The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN Sales Convention) shall be excluded.

25. Partial Invalidity

Should individual parts of these General Terms and Conditions of Purchase be or become invalid the validity of the remaining provisions shall hereby not be affected; the same shall apply to the filling of loop-holes of these General Terms and Conditions of Purchase.

Blomberg, April 2011
PHOENIX TESTLAB GmbH