

**GENERAL CONDITIONS OF PURCHASE of VON ARDENNE Group, June 2022 edition**

**1. Scope of Application, Definitions**

1.1. These General Conditions of Purchase apply to any and all Purchase Orders and other contracts concerning delivery of goods entered into by VON ARDENNE Holding SE & Co. KGaA or one of its affiliated companies (VON ARDENNE) and its contractors (Contractor). Differing, conflicting, or additional terms and conditions on the part of Contractor are not accepted unless VON ARDENNE agrees to them in writing. Insofar as these General Terms and Conditions of Purchase do not contain any deviating provisions and VON ARDENNE has not agreed in writing to the validity of the contractor's terms and conditions, the corresponding dispositive law of the Federal Republic of Germany shall apply exclusively.

1.2. Whenever used in these terms and conditions, "affiliated companies" shall have the meaning of § 15 AktG (German Stock Corporation Act).

1.3. Oral statements before or during conclusion of the contract shall be binding only if confirmed in writing.

**2. Ordering and Order Confirmation**

2.1. All Purchase Orders and any amendments or additions thereto shall be binding only if made in writing.

2.2. VON ARDENNE is entitled to revoke the Purchase Order at no cost if the Contractor fails to confirm it without modification within 10 days from receipt. The order confirmation must include the Purchase Order number and the order item.

2.3. VON ARDENNE may request reasonable changes to the delivered goods in terms of design and execution, if these changes are technically necessary or are based on the end customer's requests. In such case, the consequences resulting therefrom –in particular with regard to additional or reduced costs and effects on the schedule- shall be considered accordingly.

**3. Performance**

3.1. Down payments shall be used by Contractor for the sole purpose of executing the Purchase Order. If equipment or other items are provided by VON ARDENNE to execute the Purchase Order, Contractor shall ensure proper storage and labeling as the property of VON ARDENNE. On VON ARDENNE's request, Contractor shall confirm such storage and labeling in writing. VON ARDENNE shall be entitled to audit the appropriate storage and labeling of its proprietary equipment. Contractor shall bear liability for any damage or loss.

3.2. VON ARDENNE acquires ownership of all items for which VON ARDENNE made a down payment or which were provided by VON ARDENNE to Contractor to perform the Purchase Order. Transfer of possession of such items to VON ARDENNE shall be substituted by storage of such items by Contractor at Contractor's place. If Contractor manufactures such items into another product, such manufacturing shall be considered to be performed for VON ARDENNE; transfer of title in such a product to Contractor shall be excluded. If Contractor acquires co-ownership in a manufactured product by incorporation or combination of VON ARDENNE provided items with other items, then Contractor assigns its share of co-ownership to VON ARDENNE. If an incorporation or combination is performed in such a way, that the contractor's item is to be regarded as the main item, contractor shall transfer proportional co-ownership to VON ARDENNE. Transfer of possession shall be substituted by storage of such product by Contractor at Contractor's place.

3.3. Contractor shall notify VON ARDENNE immediately of any initiation of insolvency and liquidation proceedings, Contractor's inability to pay or overindebtedness, and/or attachment of or similar access to VON ARDENNE's property by third parties. In addition, Contractor shall support VON ARDENNE in any legal in reasonable manner in retention of VON ARDENNE's property at Contractor's own cost.

**4. Prices**

The prices agreed in the Purchase Order are fixed prices. Any and all deliveries to be provided by Contractor under the Purchase Order and all rights granted to VON ARDENNE shall be compensated for with the prices stated in the Purchase Order.

**5. Taxes**

5.1. The prices do not include Value added tax (VAT), Goods & Service Tax (GST) or sales tax if payable either in the country of Site or in the country of Contractor (which shall be payable by Customer in addition to the Total Purchase Price).

5.2. Any other taxes, fees, duties and other charges which are levied on VON ARDENNE in connection with the performance of the Agreement either in the country of Site or in the country of Contractor shall be solely borne by the Contractor and the Contractor agrees to pay or reimburse VON ARDENNE for any such taxes which VON ARDENNE is required to pay.

5.3. Withholding taxes imposed on royalties or on any other transfer of intellectual property rights as well as on services will be borne by the Contractor unless VON ARDENNE or any of its affiliates can allow for these withholding taxes.

5.4. If corporate income taxes are imposed on a permanent establishment (PE) of VON ARDENNE in the country of Site or the country of Contractor due to project delivery delay(s) or extension(s) caused by Contractor and not by VON ARDENNE or any of its affiliates and subcontractors. VON ARDENNE will calculate such corporate income taxes and provide these calculations to Contractor in advance and both Parties will cooperate, and mutually agree on solutions as well as support implementation of the agreed solutions each other before Contractor will bear these corporate incomes taxes imposed on a PE of VON ARDENNE either in the country of Site or in the country of Contractor related to project delivery delay(s) or extension(s) caused by Contractor.

5.5. The Parties will cooperate and support each other to keep the tax burden at the legally allowed minimum. To do so, the Parties will provide each other with the necessary documentation, certificates, calculations, evidences etc.

5.6. If Contractor pays taxes on behalf of VON ARDENNE, e.g. withholding taxes or VAT, VON ARDENNE can request an appropriate payment evidence from Contractor.

5.7. If the tax, fees and duties actually payable as a consequence of the execution of this Agreement turns out to be higher or lower than the amount shown on the relevant invoice (including if no tax has been invoiced at all), the Parties shall fully cooperate with each other to achieve a proper tax laws treatment.

**6. Deadline, Delay**

6.1. The agreed delivery dates and periods are binding. The definitive event for compliance with the delivery date or period is the receipt of the goods at the place of destination specified in the Purchase Order.

6.2. If Contractor becomes aware that the agreed dates, for whatever reason, cannot be complied with, Contractor shall immediately notify VON ARDENNE of such delay, indicating its probable duration.

6.3. In case of delay VON ARDENNE is entitled to claim a contractual penalty in the amount of 0.5% of the order value per week or part thereof, but not exceeding 5% of the total order value. Contractor has the right to demonstrate to VON ARDENNE that no damages or significantly lesser damages were incurred as a result of the delay. The penalty for delay will then be reduced accordingly. Any further claims for damages remain unaffected, but the contractual penalty shall be deducted therefrom.

6.4. If Contractor fails to provide the goods even within a reasonable period granted by VON ARDENNE, then VON ARDENNE is entitled to engage a third party to fulfill the contract (substitute performance) and to claim from Contractor compensation for such expenses and additional costs. VON ARDENNE shall also be entitled to claim compensation for damages instead of fulfillment. Upon expiration of the grace period granted by VON ARDENNE, Contractor's right to remedy and VON ARDENNE's obligation to accept the goods shall lapse if and insofar as VON ARDENNE has engaged a third party for substitute performance or has demanded compensation of damages in lieu of performance.

**7. Delivery, shipment**

7.1. Each delivery must be accompanied by a transport document stating at least the purchase order number, order line, the VON ARDENNE item number and description of the content in terms of type and amount. Partial deliveries need to be marked as such. In case of excess delivery, VON ARDENNE is entitled to return the goods at Contractor's cost.

**7.2. Export Control and preference**

Contractor shall inform VON ARDENNE about any authorization requirements that may arise to the ordered goods and about goods that are subject to restrictions on (Re-) Exports in particular according to the regulations applicable in United States, the European Union and its country of origin on each order confirmation, delivery note, and invoice. Furthermore the supplier is obligated to inform VON ARDENNE immediately in writing about any changes in authorization requirements on the ordered goods caused by technical, legislative changes or by official statements. Unless otherwise agreed, delivered goods shall have their origin in a country with which the European Union has concluded preferential agreements. For deliveries from preference countries supplier has to provide preference documents for evidence.

7.3. Unless otherwise agreed in the Purchase Order, deliveries shall be made DAP (INCOTERMS 2020) to the place of destination in Dresden specified by VON ARDENNE. VON ARDENNE does not assume costs for transport insurance. If the Purchase Order provides for an acceptance of the goods (and works, if any), then the transfer of risk shall be exclusively governed by § 644 para 1 sentence 1 and 2 BGB.

7.4. Incoming goods inspection at VON ARDENNE shall be limited to visible transport damage, quantity determination and identity of delivered goods, at least based on the transport document. VON ARDENNE will notify Contractor without undue delay of deficiencies found during the incoming goods inspection. Further deficiencies found during regular course of business will be notified by VON ARDENNE without undue delay after realization of such deficiencies. Apart from the foregoing, VON ARDENNE has no further examination obligations. Contractor waives his right to claim a delay in the receipt of the notification of defects.

**8. Payments**

8.1. Payments shall be made as agreed in the Purchase Order. Deliveries made before the agreed date shall have no effect to the related payment date.

8.2. Unless otherwise agreed, payment is due within 14 days with 3 % discount or within 30 days of receipt of a verifiable invoice. The invoice shall refer to the purchase order number, order item, and the VON ARDENNE item number.

8.3. Contractor shall not assign to third parties any rights Contractor may have against VON ARDENNE. The rights of both parties pursuant to § 354a HGB shall remain unaffected.

8.4. VON ARDENNE shall be entitled to offset against any and all claims it may have against Contractor, regardless of the legal reason. This provision shall also apply even if one party agrees to cash payment and the other party has agreed to payment in bill of exchange or other services. Contractor may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

8.5. The title to any goods to be delivered shall pass to VON ARDENNE no later than upon payment in full.

**9. Third Party Intellectual Property Rights**

9.1. Contractor guarantees that VON ARDENNE does not infringe patents or intellectual property rights including applications for intellectual property rights and/or other copyrights in Germany and in the agreed destination countries by reselling or using the delivered goods for the intended purpose and shall indemnify and hold harmless VON ARDENNE against third party claims resulting from the use or infringement of such rights.

9.2. Contractor shall immediately inform VON ARDENNE of third party intellectual property rights which Contractor has become aware of and which may prevent VON ARDENNE or its customers from the agreed use of the delivered goods.

**10. Acceptance**

If the Purchase Order provides for an acceptance of the goods, such acceptance must always be declared explicitly in writing by VON ARDENNE. Functional tests, commissioning, or use of the delivered goods shall not be deemed to be an acceptance in the legal sense pursuant to § 640 BGB.

**11. Claims under defect liability / product liability**

11.1. Contractor warrants that the delivered goods are conform to the current state of the art, comply with the applicable standards and regulations, and will be provided professionally, in perfect quality, in accordance with the contractually agreed specifications, and are free from third party rights.

11.2. Unless otherwise agreed in the Purchase Order, warranty period shall start with delivery or – if an acceptance has been agreed – with acceptance. For replaced or rectified parts, the warranty period shall restart with completion of rectification or replacement.

11.3. Contractor shall assume liability for any and all costs related to rectification of defects occurred during warranty period; especially, but not limited to, cost for disassembly and re-assembly of the defect good, cost for labor and materials and cost to transport the defect good to a place differing from the place of destination specified in the Purchase Order.

11.4. Contractor shall indemnify and hold harmless VON ARDENNE from any claims arising from producer's liability or under the Product Liability Act, as far as the damage was caused by a defect in the goods to be provided by Contractor and the Contractor is liable in the external relationship itself. Contractor shall insofar bear all costs and expenses, including legal costs, unless the cause of the defect was outside of Contractor's sphere of responsibility.

11.5 The Contractor undertakes to maintain product liability insurance with a sum insured of EUR 5 million per claim, both for personal injury and property damage, for the duration of the contract and thus until the expiry of the limitation period for defects. In addition, the contractor undertakes to prove the existence of such insurance immediately upon request by VON ARDENNE.

**12. Termination and Suspension**

12.1. VON ARDENNE is entitled at any time to temporarily suspend the execution of or to terminate a Purchase Order by written notice.

12.2. After receipt of such written notice as to Section 12.1, Contractor is - until further instruction of VON ARDENNE - obliged to suspend work, to give no further orders to third parties, and to cancel orders already issued to third parties. The performance and materials already provided or currently in progress shall initially be secured by Contractor until further instruction from VON ARDENNE.

12.3. If VON ARDENNE terminates the Purchase Order for convenience, Contractor shall –excluding any further claims for whatever legal reason- be entitled to payment of such portion of the Purchase Order Price corresponding to the performances which are proven to be already executed at the date of receipt of the notice as to Section 12.1. Furthermore, Contractor shall be entitled to compensation of the proven termination costs.

12.4. Upon resumption of deliveries and services, Contractor may request – excluding any further claims - a reasonable postponement, and compensation of documented, reasonable suspension costs.

12.5. VON ARDENNE shall be entitled to terminate the Purchase Order if insolvency proceedings are filed on the assets of Contractor or if Contractor suspends payments.

12.6. Further legally provided termination or withdrawal rights shall be unaffected.

**13. Rights to Results**

13.1. Results shall mean any and all findings obtained, laid down or embodied as well as goods or other documents produced in the course of the execution of the Purchase Order. Contractor shall transfer any and all rights to the Results to VON ARDENNE.

13.2. Contractor shall grant VON ARDENNE- insofar as VON ARDENNE is not regarded as the author of the respective Results - a right to Results (regardless of whether or not such Results are protected by industrial property rights) which is exclusive, free of charge and without limitation in place, time and contents to use such Results in v any type of use. In the case of Results which are protected by copyright and in the case of software -also with regard to the documented source code- VON ARDENNE shall in particular be entitled to show, edit or in other way transform such Results and to offer, publish, distribute, reproduce them in the original, edited or transformed form also over data networks. Furthermore, VON ARDENNE shall be entitled to perform any acts under § 69c UrhG [German Copyright Act] and to grant unlimited rights of use. VON ARDENNE shall be entitled to transfer the rights of use granted to VON ARDENNE and to grant non-exclusive, sublicensable or exclusive rights of use.

13.3. Contractor shall inform VON ARDENNE immediately in writing of all inventions or technical improvements which were created in fulfilling the Purchase Order (hereinafter referred to as „Inventions“), regardless of hether or not such Invention is protectable. Contractor shall claim the Inventions and Invention shares of his employees without limitation and transfer them completely to VON ARDENNE. VON ARDENNE shall be entitled to apply for the intellectual property rights in its own name. For that purpose, VON ARDENNE receives from Contractor the necessary information and documents. VON ARDENNE shall bear the expenses of the application and maintenance of the intellectual property right and, in case of use, the statutory employee remuneration which would apply to inventors of VON ARDENNE. Such expenses shall not be included in the remuneration pursuant to Sec.4. Contractor shall keep all Results and Inventions confidential until the application for the intellectual property rights in question have been disclosed.

13.4. Should VON ARDENNE not be interested in the transfer of rights to an Invention or Invention share, VON ARDENNE shall inform Contractor thereof. In such case, Contractor shall be entitled to apply for the intellectual property right in its own name. VON ARDENNE shall receive a right of use which is non-exclusive, free of charge and without limitation in place and time.

**14. Confidentiality**

14.1. "Confidential Information" shall mean all information, whether written or oral, disclosed by Client to VON ARDENNE or by VON ARDENNE to Client in connection with a Purchase Order, and (i) designated by the disclosing Party as "Confidential" at the time of disclosure or within thirty (30) days thereafter, or (ii) disclosed under circumstances by which Receiving Party should reasonably understand such information is to be treated as confidential, whether or not marked "Confidential" or otherwise. The same shall apply, if the information is disclosed by and/or disclosed to an affiliated company of Client or VON ARDENNE.

14.2. Confidential Information shall not include any information (i) which was known to the receiving Party prior to and independent of such disclosure; (ii) which was generally available to the public prior to such disclosure; (iii) which subsequent to such disclosure is published or made generally available to the public without fault on the part of the receiving Party; (iv) which is obtained by the receiving Party from a Third Party without a breach of such Third Party's obligations of confidentiality; (v) which is independently developed by an employee of the receiving Party not in possession of the information disclosed; or (vi) which is required by law or by court or official order to be disclosed by the receiving Party, in which case the receiving Party shall provide prompt written notice to the disclosing Party of such disclosure obligation.

14.3. For a period of no less than five (5) years following disclosure of Confidential Information pursuant hereto, neither Party may disclose the other Party's Confidential Information to any Third Party without the prior written consent of the disclosing Party. For purposes of this provision, Third Party shall not include representatives, subcontractors or employees of Client, VON ARDENNE or their affiliated companies, provided that such person has been placed under an obligation of confidentiality with respect to the Confidential Information in question.

14.4. All Confidential Information supplied in connection with a Purchase Order shall remain the property of the Party disclosing or supplying the same, and no ownership rights are granted to the receiving Party in the same.

**15. Place of fulfillment, jurisdiction**

15.1. The place of fulfillment for all deliveries is the place of destination designated by VON ARDENNE in the Purchase Order.

15.2. Venue shall be the place where VON ARDENNE has its registered office. VON ARDENNE's right to sue Contractor at Contractor's seat shall remain unaffected.

**16. Miscellaneous**

16.1. Should one or several provisions of these General Conditions of Purchase be held invalid, the validity of the remaining provisions shall remain unaffected.

16.2. The Purchase Order and these General Conditions of Purchase shall be construed with and governed by the law of the Federal Republic of Germany, under exclusion of its conflict of law-rules and the United Nations Convention on the International Sale of Goods (CISG).