

**General Purchasing Conditions (GPC) of  
3Defacto GmbH, Mühlthal (= 3Defacto)**

**Date: 01.08.2022**

**§ 1. Scope of application**

- 1.1 The present General Purchasing Conditions (=GPC) apply to all deliveries and services from business partners and suppliers [hereinafter referred to as "supplier"], both at our headquarters in the technical centre in Mühlthal and at all of our independent branches in Darmstadt and Neuenkirchen-Vörden.
- 1.2 Our general purchasing conditions only apply if the supplier is an entrepreneur within the meaning of § 14 BGB (German Civil Code) or a legal entity under public law or a special fund under public law. They apply in particular to contracts for the purchase and/or delivery of movables or rights (hereinafter 'goods'), regardless of whether the supplier manufactures the goods himself or buys them from subcontractors with or without further processing. They also apply in their respective current version to future contracts with the same supplier without express renewed reference. We shall inform the supplier immediately of any changes to our terms and conditions.
- 1.3 Conflicting, supplementary or deviating terms and conditions of the supplier expressly do not apply, even if we accept the supplier's delivery without reservation while being aware of the conflicting terms and conditions of the supplier.
- 1.4 Individual agreements with the supplier (including ancillary agreements, additions and changes) take precedence over our general purchasing conditions, provided they are at least in writing.
- 1.5 Legally relevant declarations of any kind, deadlines, reminders, declarations of withdrawal must at least be in text form to be effective. The enumeration of the text form requirements in our general purchasing conditions is therefore only an example and not final.
- 1.6 References to the validity of legal provisions are only made for clarification with the proviso that legal provisions apply insofar as our general purchasing conditions do not directly change or exclude them.

## **§ 2. Conclusion and scope of the contract, rights and obligations of the supplier**

- 2.1 The supplier's cost quotes are binding and not to be remunerated unless otherwise explicitly agreed in writing.
- 2.2 Orders from us are only legally binding in writing. The supplier must notify us in writing of obvious errors and incompleteness of the order, including order documents, for the purpose of correction or completion prior to acceptance, otherwise the contract is deemed not to have been concluded.
- 2.3 If the supplier does not immediately accept the order in writing, we are entitled to revoke it. If the supplier accepts the order with deviations, this must be clearly indicated in the acceptance statement. In this case, a contract is only concluded if we agree to these deviations in writing. A belated acceptance shall be deemed to be a new offer and requires confirmation by us.
- 2.4 In the case of an informal, i.e. verbal or telephone business transaction, the later order in writing from us is considered a commercial confirmation letter.
- 2.5 In the absence of any agreement to the contrary, call-offs for deliveries in the case of continuing obligations become binding if the supplier does not object to this in writing and is received by us within two working days (6-day week) of receipt of the call-off.
- 2.6 3Defacto can request changes to the delivery item after the conclusion of the contract, insofar as this is reasonable for the supplier. In the case of such a contract change, the effects on both sides, in particular with regard to possible additional or reduced costs, the product quality and the delivery dates, must be appropriately taken into account.
- 2.7 The deliveries and services are to be produced and provided by the supplier as the manufacturer, according to the pre-existing state of technology. The supplier must comply with the legal and other regulations of the Federal Republic of Germany and the EU. In addition, they must also comply with the regulations of the countries to which the deliveries and services are sold by us or by our customers, insofar as we highlight this before the contract is concluded.

- 2.8 Information from the supplier on the contract goods, regardless of whether from his product sheets or specifications/descriptions, are deemed to be agreed properties. The supplier is exclusively responsible for the delivery of goods that meet the specifications. In the case of goods with digital content or services, we expressly object to a restriction of service with regard to the provision and updating of digital content in relation to the statutory provisions of §§ 475 b III BGB (German Civil Code). The goods must be packaged in such a way that a negative influence on the product is excluded and the requirements of good manufacturing practice (GMP) are met.
- 2.9 Unless otherwise agreed in writing, DDP, i.e. Delivered Duty Paid, (Incoterms 2020) is generally deemed to have been agreed.
- 2.10 Even in the case of long-term call-offs, we expressly object to the supplier's failure to honour delivery obligations, which bears the procurement risk for its services and the material risk up until receipt of delivery. We object to any embargo clause and any reservation of performance. Delays in delivery must be reported immediately in writing, stating the reasons and the expected duration of the delay. The legal rights of both parties, in particular from § 313 BGB (German Civil Code), remain unaffected by our objection.
- 2.11 We object to partial deliveries/partial services that have not been individually agreed and are not obliged to accept them. Partial delivery does not result in any transfer of risk.
- 2.12 The transfer of ownership of any delivered goods to 3Defacto must take place unconditionally and without regard to the payment of the purchase price. We object to any property or current account reservation.
- 2.13 3Defacto reserves the property rights and copyrights to illustrations, plans, drawings, invoices, implementation instructions, product descriptions and other documents such as means of production, etc. Insofar as they are essential for the fulfilment of the contract, the supplier has an obligation to check and highlight discrepancies, errors, contradictions or other defects within the scope of his specialist knowledge. The supplier is solely responsible for his planning and calculations regarding the provision of contractual services, even if an exemption is included in the order confirmation.
- 2.14 The supplier undertakes to use all documents exclusively for the implementation of the contract for 3Defacto, and not to make them available for his own or third-party purposes, unless we have given our consent in writing.

- 2.15 The same applies to substances and materials as well as to tools, templates, samples and other items that 3Defacto provides to the supplier for the production of contractual products. Such items are to be stored separately at the supplier's expense and to be newly insured to a reasonable extent against destruction and loss (all risk insurance) at replacement value in our favour and to be used exclusively for the fulfilment of the contract with us.
- 2.16 The involvement of subcontractors requires our prior written consent. Subcontractors are to be named in the offer and their registered office, including the respective scope of delivery and services. The supplier must ensure through appropriate agreements, at least in writing, that a subcontractor approved by 3Defacto, like himself, complies with all the tasks and obligations assumed and must prove this to 3Defacto on request.
- 2.17 3Defacto is entitled to conclude contracts for other deliveries and services with the supplier's subcontractors.
- 2.18 All 3Defacto documents are to be returned to 3Defacto upon first request without a right of retention or are to be deleted upon request.

### **§ 3. Special confidentiality/Developments and rights**

- 3.1 The supplier must treat the conclusion of the contract, its content and scope in a confidential manner even after the end of the contract.
- 3.2 The supplier further undertakes to keep secret all information and documents marked as confidential by 3Defacto (e.g. technical and other data, measured values, calculations, documentation, know-how, drawings), insofar as they are not publicly known, not to make them accessible to third parties without our consent and to only use them for the purpose of carrying out the respective order for 3Defacto. They are considered trade secrets.
- 3.3 In the case of research, development, design, engineering and other orders that involve the development of a technical solution to a problem on our behalf, 3Defacto is solely entitled to all inventions/developments that the supplier makes/wins as part of the fulfilment of the contract, regardless of the question of intellectual property rights.

This also includes the right to protect special rights via corresponding registration by us. The same applies to new technical know-how that did not form a part of the pre-existing state of technology. We grant the supplier a simple right to use these rights for the purpose of fulfilling the contract. The supplier will assert ownership over his employees' inventions on behalf of, and to the benefit of, 3Defacto. The supplier undertakes to notify 3Defacto of the employee invention and the technical know-how in writing within 2 weeks. 3Defacto bears the costs according to the Employee Invention Act if 3Defacto claims the invention. Otherwise, the transfer of rights to us is covered by the contract prices.

#### **§ 4. Delivery time, scope of delivery, subsequent delivery obligation, delay, contractual penalty**

- 4.1 Agreed delivery dates and deadlines are binding. The decisive factor for compliance with the delivery date or the delivery period is the receipt of the goods or service at the receiving point specified by 3Defacto in the order, without naming the place of performance. We can reject surplus or short deliveries due to defectiveness at the risk and expense of the supplier. In the event of a delay in delivery, 3Defacto is entitled to the statutory rights and claims without restriction. In particular, in the event of a delay in delivery, 3Defacto can withdraw from the contract and also demand compensation for non-performance.
- 4.2 All deliveries are to be delivery duty paid either at the place of performance/headquarters of 3Defacto in Mühlthal or alternatively to the delivery address specified by us in the order, duty paid, including packaging in addition to transport insurance at the expense of the supplier.
- 4.3 In the case of goods with digital elements or other digital content, the supplier is responsible for providing and updating the digital content to the extent that this results from a quality agreement according to the provisions of these purchasing conditions or other product descriptions of the supplier or from the contract, advertising or from other goods documents.
- 4.4 The deliveries must include detailed accompanying documents, which show the exact description of the goods, the part numbers, the order numbers, the quantities and the certificates from the tests carried out by the supplier. Delays in processing and payment resulting from incomplete information are not at the expense of 3Defacto. In the event of missing shipping documents, in particular certificates of origin or proof of sales tax law, we reserve the right to refuse acceptance of the goods at the expense and risk of the supplier.

With each delivery, the supplier must issue and hand over a corresponding declaration of identity and a test certificate for conformity per delivery/service. He undertakes to provide us with all necessary product information free of charge and in good time before delivery, insofar as necessary such as safety data sheets, processing instructions, instructions for use, etc. in German and English and to provide us with all information and documents that are necessary for proper and legally compliant distribution. Subsequent changes and updates to the aforementioned product information must be communicated to us by the supplier immediately in writing and also made available free of charge and in good time.

- 4.5 The supplier is obliged to keep stocks of the replacement goods required for the period of the usual lifespan of the delivery items and to deliver them within a reasonable time, as is customary in the business relationship. The supplier guarantees that his goods can be purchased over a period of at least 5 years since the last delivery. Furthermore, if the production of replacement goods is stopped, the supplier is obliged to inform us immediately in writing when he will stop the delivery so that 3Defacto can purchase sufficient replacement goods. The supplier is obliged to notify the situation in writing at least 6 months before the change in circumstance, so that 3Defacto can still order replacement goods to the required extent for stocking.
- 4.6 In the event of a delay in delivery, 3Defacto is entitled - in addition to further legal claims - to flat-rate compensation for the damage caused by the delay in the amount of 0.3% of the net order value per working day (6-day week), in the case of agreed partial deliveries 0.3% of the pro rata value of the delivery, but no more than 5% of the total net order value of the delivery. 3Defacto reserves the right to prove higher damage. In this case, the lump sum will be offset against the damage. The supplier reserves the right to prove that no damage at all or only a significantly lower damage than the flat rate has occurred.

## **§ 5. Prices and terms of payment**

- 5.1 The prices stated in the order are fixed prices including all ancillary costs. The prices are in euros and are net prices and include delivery "free domicile" (Delivery Duty Paid, Incoterms 2020), as well as packaging, transport liability insurance, customs clearance including ancillary customs costs and any assembly/installation that may be required. At the request of 3Defacto, the supplier must take back

and dispose of packaging material at his own expense.

- 5.2 In the case of continuing obligations, we expressly object to the supplier's price increase claims, even if there is a longer period of time than 4 months between the conclusion of the contract and delivery.
- 5.3 The agreed price is due within 30 calendar days of complete delivery and service (including any agreed acceptance) and receipt of a properly prepared invoice, which must contain all order references and item numbers from our order. If 3Defacto makes payment within 14 days after the due date, the supplier grants 3Defacto a 2% discount. In the case of bank transfer, the payment is on time if 3Defacto instructs the bank to make the transfer before the end of the payment period. 3Defacto does not owe any default interest, the interest on arrears is 5 percentage points per year above the base interest rate. A reminder at least in writing by the supplier is required in any case for the occurrence of default.
- 5.4 Payments do not constitute acknowledgment of the delivery or service as being in accordance with the contract; they are also subject to the invoice verification and goods inspection.
- 5.5 In the event of defective delivery or service, including wrong delivery, underperformance and overperformance, 3Defacto is entitled to withhold payments in an appropriate amount. 3Defacto is entitled to set-off and retention rights as well as the objection of the unfulfilled contract within the legal scope. In particular, 3Defacto is entitled to withhold due payments from a current account in an appropriate amount as long as 3Defacto is still entitled to claims from incomplete or defective services against the supplier from the same business relationship.
- 5.6 The supplier is only entitled to rights of retention due to legally established or undisputed counterclaims from the same legal relationship if the legal requirements for this are otherwise met.

## **§ 6. Quality control/Warranties/Liability/Statute of limitations/Audits / Controls**

- 6.1 The commercial obligation to examine and give notice of defects according to the legal provisions of §§ 377, 381 HGB (German Code of Commercial Law) is restricted with the following proviso: Our obligation to inspect is limited to defects that



become apparent upon receipt of the goods from an external inspection, including the delivery documents provided by the supplier. This applies, for example, to damage in transit, wrong or short deliveries or defects that are recognisable during a quality control as part of the random sample procedure. In the event of agreed acceptance, there is no obligation to inspect. In addition, it depends on the extent to which an examination is feasible at all, taking into account the circumstances of the individual case; no examination is carried out in the case of third-party transactions. Our obligation to give notice of defects discovered later remains unaffected. In any case, our notification of defects is considered timely if it is made within 10 working days of discovery, or within 3 working days in the case of obvious defects.

- 6.2 The supplier is obliged to inspect the material/raw materials provided by 3Defacto immediately upon delivery for obvious and recognisable defects, including transport damage. In any case, the supplier is obliged to examine the goods/raw materials provided for defects before further processing. The supplier is obliged to notify 3Defacto immediately of any defect found, at least in writing and in advance by telephone.
- 6.3 For all defects as to quality/defect of title, including incorrect and short deliveries and other breaches of duty by the supplier, the statutory provisions apply without restriction with regard to our rights. Deviating from § 442 paragraph 1 sentence 2 BGB (German Civil Code), 3Defacto is also entitled to full claims for defects if both parties were unaware of the defect at the time the contract was concluded due to gross negligence.
- 6.4 The supplier shall bear any costs incurred by us and our customers for the purpose of testing and rectification, even if it turns out after testing that the defect was due to defects in the supply chain.
- 6.5 If the supplier does not remedy the defect immediately upon request from 3Defacto, 3Defacto has the right in urgent cases, in particular to avert acute dangers or avoid major damage, to do this itself or have it done by third parties at the expense of the supplier, regardless of the law of 3Defacto, in the aforementioned urgent cases, to arrange for the substitute to be carried out at the expense of the supplier. We are also entitled to demand an appropriate advance payment for the implementation of such measures.
- 6.6 Claims for defects - regardless of the legal reason - expire 36 months after delivery, subject to longer statutory limitation periods,



especially in the case of deliveries of building materials. If acceptance has been agreed, the limitation period begins with acceptance of the overall service. The limitation period for any claims arising from the infringement of property rights is at least 3 years. It only begins with our knowledge of such claims against us. At the longest it is 10 years from the infringement.

- 6.7 After a corresponding announcement with a period of 3 days during production and before delivery, we are entitled to check the quality of the material used, dimensional and quantitative accuracy and other quality of the manufactured parts as well as compliance with the other regulations of our order in the supplier's works and his upstream suppliers. The material costs for the production tests and controls shall be borne by the supplier if there was a reason for us to carry out such tests or controls or if defects are found which would have impaired/prevented the fulfilment of the contract.

## **§ 7. Supplier's redress**

- 7.1 We object to any limitation of liability with regard to statutory rights of recourse; In addition to claims for defects, we are entitled without restriction to our statutory claims for expenses and recourse within a supply chain (e.g., §§ 478, 445 a, 445 b, 445 c, 327 paragraph 5, 327 under BGB (German Civil Code)). In any case, 3Defacto is entitled, at its own discretion, to demand the elimination of defects or a replacement delivery that we owe our customers in individual cases; in the case of goods with digital elements or other digital elements, this also applies with regard to the provision of necessary updates. This does not restrict our statutory right to choose according to Section 439 Paragraph 1 of the German Civil Code. In any case, all expenses for the rectification of defects or replacement delivery are to be borne by the supplier, which also includes possible necessary installation and removal costs including other ancillary costs in this context that arise from the fact that the defective delivery is further processed and possibly installed by third parties and must be removed. The right to damages, in particular the right to damages instead of performance or in addition to withdrawal, is expressly reserved.
- 7.2 Before fulfilling a defect claim asserted by the customer, we undertake to notify the supplier and give him the opportunity to minimise the damage and find an amicable solution. If the supplier does not react within a reasonable period of time and no amicable solution can be found, the claim for defects that we actually granted to our customer is deemed to be owed, whereby the supplier has the right

to provide evidence to the contrary.

- 7.3 Our claims from supplier's redress also apply if the defective goods have been connected to another product by us, our customer or a third party, for example by fitting, attachment or installation, or have been further processed in some other way.

## **§ 8. Rights of third parties**

- 8.1 The supplier guarantees that the subject matter of the contract is free of third-party rights. In the event of an infringement of third-party rights, the supplier shall indemnify 3Defacto against all claims at first request.
- 8.2 3Defacto will immediately notify the supplier of claims asserted by third parties, at least in writing.
- 8.3 If the exploitation or use of the delivery item by 3Defacto is impaired as a result of existing property rights of third parties, the supplier must either obtain the appropriate approval at its own expense or change the service or produce/exchange it in an equivalent manner so that the exploitation or use of the delivery no longer conflicts with property rights of third parties and that it corresponds to the contractual agreements at the same time. The change or replacement must be reasonable for 3Defacto.

## **§9. Product liability**

- 9.1 In the event that a claim is made against 3Defacto due to product liability, the supplier is obliged to indemnify 3Defacto from such claims if and to the extent that the damage was caused in whole or in part by a defect in the contractual item supplied by the supplier.
- 9.2 In the cases of section 8.1, the supplier assumes all costs and expenses, including costs of any legal action or recall campaign. Otherwise, the statutory provisions apply.
- 9.3 The supplier is obliged to maintain product liability insurance with an appropriate coverage amount during the term of the contract and for the period of the warranty and subsequent purchase entitlement according to Section 4.4 and to provide evidence of this on request.
- 9.4 Should recall/exchange campaigns, public warnings, legal prosecutions

or other precautionary measures be necessary within the framework of this liability, the supplier must finance the costs and expenses incurred by us in advance; we are obliged to settle accounts after implementation. We will inform the supplier - as far as possible and reasonable - about the content and scope of the measures.

#### **§10. Rights and obligations in connection with provisions**

3Defacto retains ownership of any tools made available to the supplier by 3Defacto. If 3Defacto provides the supplier with parts/goods, the supplier will process and transform them for 3Defacto. If these reserved goods are processed with other items that do not belong to 3Defacto, 3Defacto acquires co-ownership of the new item in proportion to the value of the 3Defacto item (purchase price plus statutory VAT) and to the other items at the time of processing. If the mixing/combination takes place in such a way that the supplier's item is to be regarded as the main item, it is agreed that the supplier transfers proportional ownership to 3Defacto; the supplier retains sole ownership or co-ownership on behalf of, and to the benefit of, 3Defacto. The same applies to the further processing of the delivered goods by 3Defacto, so that 3Defacto is considered the manufacturer and acquires ownership of the delivered product at the latest with the further processing in accordance with the statutory provisions.

#### **§11. Legal consequences of force majeure**

- 11.1 3Defacto is not responsible for the non-fulfilment of bindingly agreed acceptances if 3Defacto proves that the non-fulfilment is due to an impediment that is beyond its control and that it cannot reasonably be expected to take the impediment into account at the time when the contract is concluded or to avoid or overcome the reason for the impediment or its consequences (force majeure are unavoidable events, such as natural disasters, earthquakes, floods, storms, volcanic eruptions, base chance, riots, blockades, fire, civil war, embargo, hostage-taking, war, revolution, sabotage, [strikes, if these take place at a third party,] terrorism, traffic accidents, pandemics/epidemics, production disruptions). If the non-performance is a result of non-performance by a third party whose services 3Defacto uses to fulfil the contract, it is only exempt from liability, i.e. the requirement to perform, if it is exempted according to sentence 1 and the third party would also be exempt according to sentence 1, if sentence 1 would apply to him. The exemption applies in principle to the time for which the reason for the hindrance exists. In these cases, 3Defacto is obliged to notify the supplier

of the reason for the impediment and its effects on their ability to fulfil immediately after becoming aware of the reason for the impediment. Failure to comply with this notification obligation within a reasonable period of time will result in 3Defacto being liable for the damage arising from the non-receipt of the notification. The liability exemption mechanisms in this clause are final. National law only applies as a supplement; in the event of contradictions, these general purchasing conditions take precedence.

11.2 If the requirements of the aforementioned paragraph 10.1 are met, 3Defacto is exempted from the acceptance obligation in the above sense and from any claims for damages. If it is possible to postpone acceptance to a later point in time, and if this is reasonable for 3Defacto, the supplier is entitled to deliver the contractual products at the later point in time to be specified by 3Defacto and 3Defacto is obliged to accept them. If this possibility is proven not to exist, 3Defacto is authorised to withdraw from the contractual relationship in whole or in part free of damage/penalty. 3Defacto provides the proof.

#### **§12. Notification obligations of the supplier, premature termination of contract in the event of cessation of payments, insolvency**

12.1 The supplier must inform 3Defacto immediately in writing about any transfer of contract by operation of law and/or any change of company, change of domicile and change of ownership of more than 50 % by the supplier.

12.2 If the supplier stops his payments or if foreclosure is carried out on his assets and is not stopped within a period of three weeks or if a provisional insolvency administrator is appointed or insolvency proceedings are opened against his assets, 3Defacto is entitled to terminate the contract in whole or in part without notice, alternatively to withdraw. The supplier must refund any down payments received without any right of retention. The supplier must also return delivered deliveries.

12.3 If 3Defacto chooses to terminate the contract in the above cases, the deliveries made up to that point will only be charged at contract prices to the extent that they can be used as intended. The damage incurred by 3Defacto will be taken into account in the settlement.

#### **§13. Applicable law/Jurisdiction/Place of performance/Final provisions**

13.1 The law of the Federal Republic of Germany applies between the parties.

The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded.

- 13.2 Place of jurisdiction for all disputes is Darmstadt. 3Defacto is further entitled, at its own discretion, to sue the supplier at the court of his place of business or his branch or at the court of the place of performance.
- 13.3 Place of performance for all deliveries and services according to this contract is Mühlthal.
- 13.4 The supplier agrees that 3Defacto may store, process and, if necessary, transmit to third parties company and personal data of the supplier and his employees for the purpose of processing the transaction, provided this is necessary for the processing of the contract and ensures that relevant the approvals are obtained. We assure compliance with the provisions of the GDPR.
- 13.5 Should individual parts of these general purchasing conditions be or become legally ineffective, the effectiveness of the remaining provisions will not be affected. The invalid provision is to be replaced by an effective provision that comes as close as possible to the economic purpose of the invalid provision.