

**Infoterra GmbH  
General Terms and Conditions of  
Purchase 2/2010**

**1. Scope of Application**

**1.1** The following General Terms and Conditions of Purchase shall apply to all goods and / or services purchased or acquired from the Supplier by or on behalf of Infoterra GmbH and its branch offices (hereinafter "Infoterra").

**1.2** General Terms and Conditions of Business of the Supplier, deviating from or supplementary to these General Terms and Conditions of Purchase, shall not be binding on Infoterra, even where not expressly refuted by Infoterra or where the Supplier makes its General Terms and Conditions of Business the exclusive basis for delivery.

**2. Conclusion of Contract**

**2.1** Where the Supplier fails to accept a purchase order from Infoterra in writing within a period of two weeks thereof, Infoterra shall be entitled to cancel the purchase order. Infoterra's acceptance of the receipt shall determine expiry of the above time limit.

**2.2** Acceptance of the purchase order shall include all relevant data, in particular the precise description of the supplies, order numbers, order, delivery date and price.

**2.3** Amendments and alterations to the purchase order by the Supplier shall only be effective if confirmed by Infoterra in writing.

**2.4** The Supplier shall not be entitled to subcontract the purchase order in whole or in part to third parties or to have it carried out by third parties without the prior written consent of Infoterra. Unauthorized subcontracting to third

parties shall entitle Infoterra to terminate the contract in whole or in part and to claim damages.

**3. Prices**

**3.1** The Supplier's prices shall be considered free at place of performance. They shall include costs for packaging, loading and freight forwarding, including any insurance costs for the transport of goods. The Supplier shall, at his own expense and risk, procure the export and import licenses or other approvals by authorities and meet with all customs formalities required for the import and export of the goods and, if necessary, for transit through third countries.

**3.2** The Supplier shall be responsible for complying with national and US export regulations regarding export and re-export of goods and / or technology supplied to Infoterra. For these purposes, the Supplier shall also be responsible for obtaining any necessary export license or official authorization from the relevant authorities.

**3.3** Prices agreed are fixed, to the exclusion of any additional claims or price increases.

**4. Payment**

**4.1** The Supplier's invoices shall be submitted in duplicate and must include all information requested in the purchase order for each delivery.

**4.2** Unless otherwise agreed, payments by Infoterra shall be made by bank transfer, subject to 3 % discount within 14 days of delivery and receipt of invoice, subject to 2 % discount within 30 days of receipt, or without discount within 90 days thereof. Discounts may also be claimed by Infoterra where it offsets or withholds payments because of defects.

**5. Date of Delivery and Performance**

**5.1** The agreed delivery date shall be binding. Early and late deliveries are possible only with the written consent of Infoterra.

**5.2** Deliveries are considered timely when received at the delivery address specified by Infoterra. The Supplier shall immediately inform Infoterra when and as soon as it becomes evident that it is unable to meet the delivery date. Acceptance of a delayed delivery by Infoterra shall not be considered a waiver of any claims to compensation.

**5.3** Where the Supplier is late in delivery, Infoterra shall be entitled to claim a contractual penalty of 0.5 % of the order value for each week of delay commenced, up to an aggregate maximum of 5 % of the order value. The contractual penalty can be asserted, even after acceptance, until the final payment. Further claims by Infoterra remain unaffected.

**5.4** Infoterra is under no obligation to accept partial deliveries. Where partial shipments are agreed, the outstanding delivery shall be recorded on the delivery slip.

**5.5** Place of performance for goods or services provided by the Supplier shall be the delivery address specified in the relevant purchase order. Where no delivery address is specified and where place of performance does not result from the nature of the contract, Infoterra's registered office shall be regarded as place of performance.

**6. Shipment and Passing of Risk**

**6.1** The Supplier shall be obliged to package and ship the goods properly. All regulations relating to packaging and shipment must be complied with. The Supplier shall be liable for all damage and losses sustained by Infoterra as a result of incorrect or insufficient packaging.

**6.2** Each consignment shall be accompanied by shipping documents, e.g. delivery slips, packing notes, etc. Order numbers and other data specified by Infoterra in the purchase order must be indicated on all pertinent documents. Infoterra must be provided with notice of shipment, at the latest on the day of shipment.

**6.3** Any additional costs incurred by Infoterra due to failure to observe the above provisions shall be charged to and borne by the Supplier.

**6.4** Risk shall pass in the case of deliveries not involving installation or assembly on receipt of the goods at the delivery address specified by Infoterra. Where deliveries involve installation or assembly and where on site work performances are provided, risk shall pass when the goods or work are accepted on site as agreed.

#### **7. Rights of Infoterra in Case of Defects**

**7.1** The Supplier unconditionally guarantees proper delivery and supply of the goods. It guarantees in particular quality and quantity of the goods delivered as specified in the purchase order. The Supplier warrants that the goods are free from all defects in title, including any third party rights.

**7.2** The Supplier shall be responsible for defects in the goods for the period of three years as from transfer of risk. Where the delivery relates to buildings or works, including building materials or components, the limitation period shall be five years from acceptance.

**7.3** Where Infoterra identifies defects in the normal course of business it shall notify the same to the Supplier in writing within two weeks from knowledge thereof.

**7.4** Where goods delivered show defects during the warranty period, Infoterra shall be entitled to exercise legal remedies at its own

choice i.e. by repair or supplying an object free from defects. Infoterra shall also be entitled to assert these rights prior to transfer of risk together with the claim to performance where defects are identified at this stage.

**7.5** Where subsequent performance by the Supplier in the exercise of a remedy fails, or the remedy is in Infoterra's view unreasonable, the Supplier refuses to provide a remedy, or the Supplier fails to provide a remedy within a reasonable period of time specified by Infoterra, Infoterra shall be entitled to reduce the purchase price or withdraw from the contract and demand compensation for unnecessary expenses or compensation for damages in lieu of performance. Where work performances are owed Infoterra shall be entitled to remedy the defect and demand compensation - including an advance on costs - for necessary expenses.

**7.6** If Infoterra exercises the right of withdrawal from the contract, the Supplier has to refund the received payments plus accrued interest at 8 percentage points over the applicable base rate. Further claims remain unaffected.

**7.7** In all cases of defects under warranty, the Supplier shall not be allowed to make the remedy dependent on partial or complete payment of the agreed remuneration. The Supplier shall bear the expenses necessary for the remedy, in particular expenses for transport, travel, work and materials and any costs of installation and removal.

**7.8** The Supplier shall be obliged to carry out a thorough examination of deliveries for defects and shall exercise its best endeavours to avoid product liability risk. Where a claim is made against Infoterra resulting from a defective product that is based in whole or in part on non-conformity of the Supplier's delivery, Infoterra shall also be entitled to be indemnified against third party claims in lieu of compensation for

damage and loss. The supplier shall take out reasonable insurance to cover such risks adequately.

#### **8. Intellectual Property, Infringements**

**8.1** Where a third party makes a claim against Infoterra for breach of industrial property rights, copyright or other rights in respect of goods and / or services provided by the Supplier and used by Infoterra in accordance with the contract, the Supplier shall fully indemnify Infoterra for any claims made by such third party. In defending unjustified claims raised by third parties, Infoterra shall adequately support the Supplier and the Supplier shall assume costs incurred by Infoterra in this regard.

**8.2** In the case of delivery of a work protected by copyright, the Supplier shall confer on Infoterra a free of charge, non-exclusive, transferable, unlimited right of use, including copying, modification, dissemination and sublicensing. Where the use of the goods necessitates the use of inventions, patents or other industrial property rights generated or registered by the Supplier or his agents prior to the start of the ordered works and services, Infoterra shall obtain a free, non-exclusive, transferable license for use with the right to sub-license. Infoterra is entitled to and the Supplier warrants that inventions which are created within the framework of the order or any registered or industrial property rights granted thereon shall be assigned to Infoterra without delay.

## **9. Duties of Instruction, Information and Care**

**9.1** Where Infoterra has informed the Supplier about the intended use of the goods supplied, or where such use is apparent to the Supplier without express mention, the Supplier shall be obliged to inform Infoterra immediately if the goods provided by the Supplier are not suitable for such intended use.

**9.2** Infoterra must be informed promptly in writing of any circumstances jeopardizing compliance with the agreed delivery dates, with a view to liaising on further action.

**9.3** The Supplier shall immediately notify Infoterra in writing of any changes or modifications in the composition of the materials used or in the engineering design if different from similar or comparable goods provided by the Supplier to Infoterra. Any such changes or modifications shall require the written consent of Infoterra.

**9.4** The Supplier shall ensure that the goods and services conform to all environmental protection, accident prevention and other industrial safety regulations applicable, as well as to safety rules and all statutory regulations prevailing in the Federal Republic of Germany. The Supplier shall advise Infoterra of any specific treatment and waste disposal requirements for each shipment, unless these standards are generally known.

**9.5** The Supplier shall be obliged to employ staff suitably qualified for this work. The Supplier is obliged to give Infoterra on request and at short notice random access for inspection.

**9.6** Infoterra reserves the right, on a case by case basis, to place the order subject to barter agreements of the Supplier in countries named by

Infoterra. Infoterra shall notify the Supplier accordingly in writing.

## **10. Customer-supplied Items**

**10.1** All documents and other items supplied by Infoterra to the Supplier shall remain the property of Infoterra. They must be used exclusively for the provision of goods ordered. The Supplier shall insure any materials transferred to him against loss and deterioration. The Supplier shall have no right of retention over the materials belonging to Infoterra, unless counterclaims are undisputed or legally enforceable.

**10.2** Infoterra shall be deemed product manufacturer, to the extent that any of the items it provides are processed, converted or transformed by the Supplier to create a new movable product. Where an item is combined with or inseparably integrated into other objects, Infoterra shall acquire joint title and ownership in the said objects to the value of the items provided at the time of combination or integration.

Where the items are combined or integrated in such a manner that the Supplier's property shall be regarded as the primary product, Infoterra shall acquire co-ownership in proportion thereto. The Supplier shall hold such products free of charge in joint ownership on behalf of Infoterra.

**10.3** The Supplier shall, at its own expense, perform any maintenance and inspection work required and shall further take out adequate insurance cover for the items provided by Infoterra. Proof of such insurance cover must be furnished to Infoterra on request.

## **11. Confidentiality**

**11.1** The purchase order placed by Infoterra is subject to confidentiality. The Supplier shall, also beyond the term of the order or premature termination of the order, keep secret and

confidential any commercial and technical information and documents that are not generally known to the public and which have been disclosed in the course of the business relationship. The Supplier further undertakes to use such information and documents exclusively in the context of providing the goods ordered. The duty of confidentiality shall extend accordingly to any subcontractors.

**11.2** Any mention by the Supplier of the corporate name or trademarks of Infoterra in advertising material, references, credentials or other publications shall require prior written consent by Infoterra.

## **12. Spare Parts and Delivery**

**12.1** The Supplier shall supply Infoterra on reasonable terms with spare parts required for a period that corresponds to the anticipated technical lifetime of the product or for at least 10 years after the last delivery.

**12.2** Where the Supplier discontinues delivery of supply goods after expiry of the delivery period according to section 12.1 or during said period, Infoterra shall be given the opportunity to place a final order.

## **13. Access to the Supplier's Premises**

**13.1** Infoterra representatives and those of official authorities or their delegates shall, at any time during normal business hours, have access to all premises in which work is carried out, irrespective of whether such work is performed at the Supplier's or its sub-supplier's premises, and shall have access to all pertinent and applicable records. This right of access shall, in particular, be granted to Infoterra's representatives responsible for monitoring, audits and investigations or controls relating to Supplier's qualification/certification.

**13.2** Infoterra customers shall, at any time during normal business hours, have access to all premises in which work is being carried out, subject to the consent and presence of Infoterra representatives.

#### **14. Further Conditions for the Performance of the Deliveries of Goods and Services by the Supplier**

**14.1 General:** The supply of goods and the provision of services shall be carried out by the Supplier in accordance with the documents and data referred to in the purchase order and furthermore, strictly in accordance with any acts, decrees, directives and other administrative rules, implemented/ enacted into German law, or any EU directive or rule applicable directly in the German law. The Supplier shall ensure that he has all appropriate elements (licenses, permits, documents, data, material, tooling) which are necessary, prior to beginning the performance under the purchase order.

**14.2 Environmental Protection:** Infoterra is certified according to the international environmental norm DIN EN ISO 14001:2004. In performing its contracts and processing orders for the final customer, Infoterra has committed itself to complying with the regulations under this environmental norm. Infoterra equally requires adherence to the foregoing regulations by its suppliers (see also under 9.4). Infoterra's environmental targets and its environmental policy are available upon request.

#### **15. Final Provisions**

**15.1** The contractual relationship between Infoterra and its Suppliers shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**15.2** The exclusive place of jurisdiction for all disputes shall be the registered office of Infoterra.

**15.3** Alterations and amendments and side agreements to the contract must be made in writing. This shall also apply to any waiver of this requirement as to written form.

**15.4** Should any of the above provisions become void, illegal or unenforceable, the validity of the remaining provisions shall remain unaffected. In this case, an invalid provision shall be replaced by a valid provision that corresponds most closely to the factual, legal and commercial purpose of these General Terms and Conditions of Purchase in their entirety. The same shall apply where there is a gap in these General Terms and Conditions of Purchase.