

## DAU General Terms & Conditions of Purchase

### 1. General Information

The Customer (hereinafter: "Customer") is DAU GmbH & Co KG or an affiliate of Miba AG (regardless of the shareholding percentage), depending on what is indicated in the order. The Supplier (hereinafter: "Supplier") is the company which enters into a contract with Customer in the area of application of these Miba General Terms & Conditions of Purchase (hereinafter referred to as "T&Cs of Purchase"). Regardless of whether explicit reference is made to them, these T&Cs of Purchase apply to all legal transactions between Customer as purchaser, buyer, ordering party or similar and Supplier, including but not limited to the production and supply of goods, processing of semifinished goods and provision of goods and services (hereinafter also referred to jointly as "Goods & Services"). These T&Cs of Purchase are available at <https://www.dau-heatsinks.com/en/general-terms-conditions/> in several languages; the language version in the language in which the contract document for which these T&Cs of Purchase form the basis was drawn up shall be deemed the authoritative version (the other language versions shall be deemed non-binding and are provided for informational purposes only); in cases of doubt, the German version shall be deemed the authoritative version. Supplier accepts these T&Cs of Purchase at the latest on the date of confirmation or start of implementation of Customer's order. The legal relations between Customer and Supplier shall in all instances be governed by these T&Cs of Purchase alone, unless other provisions are explicitly agreed in writing in a given individual case. This shall apply regardless of any reference made by Supplier to its own terms & conditions of sale or other terms and conditions, including if Customer has not explicitly objected to the inclusion thereof. Furthermore, this shall also apply in cases where Customer, in full awareness that Supplier's terms & conditions contradict or differ from its own, accepts the contractual Goods & Services without reservation.

### 2. Offer

With regard to the volume and specifications of the Goods & Services, Supplier's offer shall adhere precisely to Customer's request, and Supplier shall expressly point out any deviations. All offers and any cost estimates made by Supplier shall be provided at no cost. If Supplier's offer does not indicate an acceptance deadline, Customer is in all instances entitled to accept the offer from Supplier within a two-week period following receipt of the offer.

### 3. Orders and Purchase Orders

Orders placed by Customer are only legally binding if they are set forth in writing or sent electronically. Orders which are placed orally or by telephone shall only become binding if explicitly confirmed in writing by Customer. Supplier shall confirm Customer's orders and purchase orders in writing within 3 (three) working days (i.e., Monday to Friday, not including statutory public holidays in Customer's country of domicile) of receiving Customer's order. If that deadline has passed (decisive date: date received at Customer's premises), Customer is entitled to cancel its order (without thereby establishing grounds for any claims by Supplier). If it is not feasible for Supplier to issue an order confirmation within the aforementioned three-day deadline, Supplier shall proactively and within the aforementioned deadline send Customer written notification indicating a binding date on which Customer will receive the order confirmation at its premises. Customer, at its own discretion, is then entitled to either accept the new date or to cancel the order (without thereby establishing grounds for any claims by Supplier). If an order confirmation from Supplier differs – including minor deviations – from Customer's order, Supplier shall alert Customer and shall obtain Customer's explicit written approval for the deviation(s). At any time (and without thereby establishing grounds for any claims by Supplier), without requiring approval, Customer is entitled to reject Goods & Services which are not in accordance with the order, even if the deviations are only minor. Supplier agrees to trace and maintain records regarding the source and lot number of each Good and to keep such records for at least fifteen years from delivery.

### 4. Subcontractors/Suppliers/Third Parties; Audits

Supplier requires Customer's prior written approval if it intends to use subcontractors, suppliers or third parties, and Customer does not need to provide grounds if it refuses to grant that approval. Supplier shall only use subcontractors, suppliers or third parties who provide adequate warranty for a technologically flawless and timely contractual performance. Regardless thereof, all obligations of Supplier shall remain unchanged even if approval has been granted. Insofar as it uses subcontractors, suppliers or third parties of any kind to fulfill the contract or makes use of their products or services, Supplier is liable to the same extent (also with regard to the fault of any subcontractor, supplier or third party) as if it had rendered performance itself.

If necessary, Customer and its customers are entitled to perform inspections of Supplier and its subcontractors, suppliers or third parties of any kind who are used by Supplier to fulfill the contract, and to facilitate that Supplier shall allow Customer and its customers access to the relevant business premises if asked to do so. Supplier shall ensure that Customer's right to perform inspections, and the duty to allow access to the relevant business premises, also applies to its subcontractors, suppliers and third parties.

## **5. Prices**

The agreed prices (wages also fall into this category) are guaranteed fixed prices for the contractual Goods & Services and include all of Supplier's costs associated with the provision of the Goods & Services. Supplier shall provide warranty for cost estimates. An increase in prices – for whatever reason – is expressly excluded. Unless agreed otherwise in writing, the prices are Free Carrier (FCA, per Incoterms 2010) to Customer's named place indicated on the order/order form. If no prices are shown on the order, they must be indicated in the relevant confirmation; Customer reserves the right to reject the price indicated by Supplier (without thereby establishing grounds for any claims by Supplier) and to refrain from entering into the contract.

Payment in full of the amount due shall fully satisfy all transfer/granting of rights to Customer, in particular the rights set forth in Sections 15 and 16 herein, regardless of the type and scope of use and exploitation by Customer.

## **6. Waste Disposal**

Supplier hereby states its willingness to and makes an offer to Customer to take back the goods supplied by Supplier if instructed to do so by Customer, in order to allow expert waste disposal in compliance with the relevant regulations. Customer shall reimburse Supplier at market rates for the resulting costs, once the items have been disposed of in compliance with the relevant regulations and suitable proof has been provided.

## **7. Delivery Deadlines; Delayed Delivery**

The agreed delivery deadlines and delivery periods are binding. Unless agreed otherwise in writing, the delivery deadline is the date shown on Customer's order. The delivery deadline/delivery period shall be deemed to have been fulfilled once the Goods & Services have been delivered to/rendered at the delivery address shown on the order. Goods & Services which are provided before the agreed delivery deadline shall be deemed to have been provided on the agreed delivery deadline date. In the event of delayed delivery – including if that only applies to certain parts of the Goods & Services – Customer is entitled to either (i) insist that the contract be upheld or (ii) at its own discretion, and after having set a 14-day follow-up deadline, withdraw from the entirety of or the affected part of the contract if the contractual Goods & Services are not provided within the follow-up deadline, and (iii) in addition to (i) or (ii) demand payment of resulting damages. Regardless of the above, as soon as it becomes aware that timely delivery of all or part of the Goods & Services will not be feasible, Supplier shall immediately send Customer written notification stating the reasons and the anticipated length of the delay. Once notification has been sent, Customer, at its own discretion, is entitled to immediately withdraw from the entirety of or the affected part of the contract and to demand payment of damages on grounds of non-performance. If there are explicit provisions stating that the Goods & Services shall be provided on a specified date (fixed-date transaction), in the event of delay Customer is entitled to withdraw from the contract without setting a follow-up deadline and to claim damages. If Customer withdraws, this does not entitle Supplier to assert any claims against Customer.

## **8. Materials Made Available; Tools**

Materials which Customer makes available to Supplier shall remain Customer's property and shall be stored by Supplier separately from its own goods at no charge and clearly labelled and managed as property of Customer. Supplier may only use the materials for the purposes of providing Goods & Services to Customer. If the value of the materials falls or they are lost, Supplier shall hold harmless, defend and indemnify Customer from and against damages or claims and pay compensation as stipulated in the relevant legislation. If a third party asserts claims with regard to the materials, Supplier shall immediately notify Customer in writing and, at its own cost, shall take all necessary action to defend Customer's property rights.

All special tools, dies and equipment used in the manufacture of the Goods shall be furnished by and at the expense of Supplier. Such tools, dies and equipment shall be kept by Supplier in good condition and from time to time when necessary, shall be replaced by Supplier without expense to Customer. Customer shall have the option, however, at any time to buy from Supplier all, or any part, of such tools, dies and equipment or replacements thereof, at the book value thereof based upon cost less depreciation as shown in Supplier's books or accounts for tax purposes or as shown in Supplier's books or accounts for other purposes, whichever value is lower, and thereby become the owner, and be entitled to the possession of the same. Supplier shall not encumber, sell or otherwise dispose of such tools, dies or equipment without Customer's written consent. Tools, dies and equipment furnished to Supplier by Customer or purchased from Supplier by Customer to perform this purchase order shall remain the property of Customer, but Supplier shall bear the risk of loss of and damage to such property, normal wear and tear excepted.

Such property shall at all times be properly housed and maintained by Supplier, and shall be marked by Supplier "Property of [Customer]". Customer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Supplier's records with respect thereto.

## 9. Insurance

All shipments are covered by transport insurance under Customer's general insurance policy. Supplier only needs to obtain and provide coverage via appropriate transport insurance if Customer has demanded it in writing in a given instance. However, Supplier shall, at its own cost, obtain insurance coverage from reputable, solvent insurance companies, which shall include coverage against any claims arising from product liability for property damage and personal injury, claims arising from infringement of third-party rights, and recall liability. The insurances shall provide appropriate insurance cover based on the value and use of the contractual Goods & Services, with a maximum insured amount of at least EUR 5 million per year. Upon demand, Supplier shall present to Customer proof of insurance issued by the insurer. If Customer inspects the proof of insurance or refrains from demanding that proof of insurance be presented, this does not under any circumstances mean that Supplier can forego its aforementioned duty to obtain insurance. Furthermore, the fact that an insurance policy is in place does not in any way limit Supplier's obligations or liability arising from the contractual relationship in question. If an insured event relating to the contractual Goods & Services occurs, Customer and Supplier shall provide each other with all necessary information regarding the circumstances and incidents surrounding the insured event. Supplier hereby transfers to Customer in advance all entitlements from the insurance policy in connection with an insured event of this kind. Supplier shall notify the insurer regarding this transfer and, insofar as necessary, obtain its approval for the transfer. Payments which Customer receives based on the entitlements under the insurance policy which have been transferred to it shall be offset against the claims against Supplier relating to the insured event and shall reduce them accordingly.

## 10. Warranty

Supplier guarantees that the contractual Goods & Services can be used for their intended purpose, are state-of-the-art, and comply with the relevant standards, official specifications and trade association provisions. Furthermore, Supplier guarantees that the Goods & Services are not encumbered by third-party rights and were manufactured, acquired and marketed without infringing any confidentiality requirements, industrial property or other protective rights or fair competition provisions. Moreover, Supplier guarantees that use of the contractual Goods & Services will not wholly or partly, or directly or indirectly, infringe industrial property rights or intellectual property rights of third parties, and the use thereof will not result in unauthorized disclosure of commercial or business secrets or other confidential information of third parties. The warranty period for movable items is 48 months following acceptance of the Goods & Services. For Goods & Services supplied under warranty provisions, the warranty period shall start anew. Customer is not obligated to perform inspections or send defect reports. Thus, the statutory duty to perform inspections and send defect reports (§§ 377f, Austrian Commercial Code [*UGB*]) regarding contractual Goods & Services is not applicable. By way of derogation from the non-mandatory provision stating that warranty claims shall in all instances be asserted judicially (§ 933, Austrian Civil Code [*ABGB*]), it is hereby agreed that warranties which are asserted under warranty obligations may be asserted in a timely manner not only judicially but also in writing. If a defect is reported in writing in this manner, the warranty period and ongoing payment deadlines shall be interrupted, and shall start to run again once the defect has been fully rectified and the item has been handed over to Customer. If delivered Goods & Services are defective, at Customer's discretion, Supplier shall either rectify the defect within an appropriate deadline set by Customer or replace the Goods & Services.

If it is determined (e.g., via voluntary random sampling by Customer) that certain parts of the Goods & Services are defective, Customer is entitled to reject the Goods & Services in their entirety and return them to Supplier at the latter's expense. Supplier has sole responsibility for separating defective items from non-defective items. If both rectification of the defect and replacement are (i) not feasible or (ii) involve considerable inconvenience or are unreasonable for Customer or (iii) if no rectification or replacement is performed or is only partially performed, Customer, at its own discretion, is entitled to either withdraw from the contract or demand a price reduction. In the event of withdrawal from the contract, goods which have already been delivered shall be returned to Supplier at its expense and risk. In urgent cases, Customer is entitled to itself perform the necessary rectification or remediation work at Supplier's expense and risk, or to arrange for a third party to do so. The obligation to provide warranty also includes the duty to bear the costs of on-site defect rectification as well as the assumption of the removal and reinstallation costs. Aside from this, the relevant statutory warranty provisions apply. Contractual provisions which waive the applicability of the statutory warranty provisions in a manner detrimental to Customer are not permitted.

If a third party alleges to Customer that its rights have been infringed due to use of the Goods & Services and asserts a claim (e.g., a cease & desist claim or a damages claim), Supplier shall obtain the necessary usage rights for Customer by drawing up a license agreement. If this is not done within a reasonable deadline, Customer, at its own discretion, is entitled to withdraw from the contract or to demand a price reduction commensurate with the defect and to demand appropriate damages.

## **11. Damages; Product Liability**

Supplier shall be liable for all damages which are caused by Supplier or its subcontractors, suppliers or other parties used by Supplier for contractual performance, and shall hold harmless, defend and indemnify Customer from and against all such damages or claims (including all associated costs and expenses, in particular the costs of legal action). Customer's claim to compensation shall cover the entirety of the damages, including but not limited to lost earnings and all consequential damages suffered by Customer, its contractual partners and/or end customers, and its contractual partners and/or end customers shall be entitled to assert such damages claims directly against Supplier (contract in favor of third parties). In the event of a product recall Customer (i.e., whereby Goods & Services that have been provided to the end customer undergo checking for defects, with a view to avoiding property damage or personal injury, and at Customer's discretion the defect is rectified, if necessary, via replacement or repair) carried out by Customer or its customers, Supplier shall bear the cost thereof regardless of its culpability, unless it can prove that the Goods & Services supplied by it were not causal for the product recall. Supplier guarantees that in terms of design, production and instructions the delivered products are free of defects as defined in Austria's Product Liability Act (Federal Law Gazette for the Republic of Austria [BGBl] No. 99/1988 (as amended from time to time)) and other applicable product liability provisions. Supplier guarantees in particular that based on the prevailing state of the art of science and technology at the time the items were marketed, no defects could be found in the delivered products. Supplier shall send Customer written notification concerning any planned changes in the materials, production processes, supplied parts or other changes relating to the provision or composition of the Goods & Services. Supplier shall refrain from making any such changes unless it has Customer's explicit written consent, which shall not be withheld without objective reason. Supplier shall provide Customer with all information (e.g., operating instructions, warning labels, approval regulations) necessary for ensuring the delivery of defect-free products as defined in the Product Liability Act or other applicable product liability provisions. If Supplier becomes aware of subsequent circumstances which could cause a product defect as defined in the Product Liability Act or other applicable product liability provisions, it shall immediately send Customer written notification and reimburse all costs and expenses associated with the recall of defective products (if applicable). Limitations of any kind on Supplier's obligations under the Product Liability Act or other applicable product liability provisions, or limitations of any kind on Customer's entitlement to assert damages under the Product Liability Act or other applicable product liability provisions, shall be deemed invalid. If claims are asserted against Customer by a third party, Supplier shall hold harmless, defend and indemnify Customer from and against such damages and claims. Supplier shall provide the names of the manufacturer or upstream supplier of the defective product if at any time asked to do so by Customer.

## **12. Intellectual Property Rights of Third Parties**

Regardless of culpability, Supplier shall be liable for ensuring that the Goods & Services or the use thereof do not directly or indirectly infringe patents, utility models, brands, trademarks, trade names, registered design/designs, copyright or other protective rights of third parties of any kind, including but not limited to commercial and/or business secrets and know-how. Supplier shall hold harmless, defend and indemnify Customer from and against damages or claims asserted by third parties (including all associated costs and expenses, in particular the costs of legal action), and shall reimburse Customer for all associated and resulting damages, costs, expenses and disadvantages and/or other consequences; this applies in particular also to matters relating to or arising from indirect patent infringement.

## **13. Invoices; Payment; Offsetting and Assignment Prohibited**

Invoices shall be sent to Customer by regular mail after the Goods & Services have been delivered/rendered; invoices shall not be enclosed along with the goods. Invoices shall show the complete order number and the order date. The invoices shall clearly show the shipping address and indicate whether the shipment was free of all charges or freight collect. Invoices for work performed shall show the number and date of the relevant wage statements and installation statements. If Goods & Services are supplied on a regular basis, invoices shall be generated at the end of the month and sent to Customer no later than the 3<sup>rd</sup> of the month following provision of the Goods & Services. Invoices shall only be deemed proper if they comply with Austria's Value-Added Tax Act [UStG]. Invoices which contain material or arithmetic defects or errors shall not be deemed to be due for payment. In such instances, the payment period shall not start to run until a corrected invoice has been received. The date of payment shall have no effect on Supplier's warranty obligations. Payment shall not constitute acknowledgement that the Goods & Services are defect-free, and shall not waive warranty claims or damages claims. Advance payments shall remain stable in value, and shall be deemed aliquots of the total order value. Customer reserves the right to perform current account netting. Unless agreed otherwise in writing, at Customer's discretion, the following payment conditions apply: 14 days with 5% discount; 30 days with 3% discount; 60 days net, in all cases calculated based on the date on which a proper invoice was received.

Customer is entitled to offset amounts which are payable by it or an affiliate of Customer against Supplier or its affiliates, or to withhold said amounts. Supplier shall refrain from assigning its claims against Customer to third parties or arranging for them to be collected by third parties unless it has Customer's written consent. Moreover, Supplier is not entitled to offset its own claims against claims of Customer.



#### **14. Force Majeure**

If, due to force majeure (e.g., strike (including political strike), lockout, war, natural disaster or similar), Customer or Supplier or a subcontractor, supplier or other third party used by Supplier is unable to provide the Goods & Services or part of the due obligations in a timely manner, Customer is entitled to fully or partially withdraw from the contract or to demand provision of the Goods & Services or placed order or part thereof at a later date, without thereby establishing grounds for any Supplier claims.

#### **15. Confidentiality; Drawings and Models**

Supplier shall ensure that all technical and commercial information of Customer of which it becomes aware as part of the contractual relationship is kept confidential. In particular, "Confidential Information" shall not be disclosed. The following in particular are deemed "Confidential Information," regardless of whether they relate to Customer, its affiliates or its customers/business partners: any information, documents, drawings, data, data on electronic storage media, processes and process steps, compositions, formulae, machinery, systems, templates, objects, market and marketing information, technical and commercial information, commercial and business secrets, financial information, business models and business processes or other information that merits protection which, before or after the conclusion of the contract, are knowingly or unknowingly handed over to Supplier Customer in written, graphical, oral, visual, or electronic form, or via the sending of a product or product sample, during a company visit or in any other way, or which pass into Supplier's realm of control and/or of which it becomes aware, as well as any copies or other information derived therefrom. In particular, information or work outcomes which arise in connection with provision of the Goods & Services, regardless of whether they were created by Customer, Supplier and/or a third party (Section 4), shall be deemed Confidential Information. The following is not deemed Confidential Information: information which in its totality and in the precise structure and composition of its components was, as of the date on which the information was disclosed under this contract, demonstrably already generally known to or easily accessible by individuals in circles that customarily deal with such types of information. Customer's prior written permission is required in each individual case for any disclosure of Confidential Information or for use of the Confidential Information for own purposes or a third party's purposes, regardless of whether all or part of the information is used, whether it is modified or processed, or is part of other information. This also applies to scientific publications. Furthermore, Supplier shall only use the Confidential Information in connection with provision of the Goods & Services, and during and after the end of order fulfillment shall not use it for its own purposes or for other parties' purposes, and shall handle the information in a manner that allows Supplier to return it after contract has been fulfilled. In particular, Supplier shall not attempt to obtain any findings or draw any conclusions from the Confidential Information, nor trace back to the information which underlies it, nor to analyze it through observation, assessment, reverse-engineering or testing. Orders and work relating to them shall also be deemed Confidential Information and therefore kept confidential.

All Confidential Information, in particular all specifications, drawings and other technical documents or attachments to enquiries or orders (e.g., plans), including materials made available per Section 8 and any production resources (e.g., tools) which are handed over or made available to Supplier by Customer in connection with the conclusion or fulfillment of the contract, shall remain the property of Customer, and along with specifications, drawings, plans, detailed drawings, production materials and other technical documents and tools (hereinafter jointly referred to as "Documents") shall be used by Supplier for the actual purpose of the contract with Customer and not for any other purposes, and shall not be duplicated or made available to third parties. Upon request, these Documents and the Confidential Information along with all excerpts and duplicates shall be immediately surrendered to Customer, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

Supplier shall refrain from using its knowledge of the Confidential Information to assert any rights relating to protective rights applications, and in particular shall refrain from asserting rights based on prior use. As stipulated in Section 16, all work outcomes and documents which are generated or produced based on Confidential Information of Customer, including the jointly prepared specifications sheets, shall become the property of Customer when created and shall be marked as the property of Customer. Production materials, in particular tools, templates, technical devices etc. which Customer has made available to Supplier shall be marked as the property of Customer and are subject to the confidentiality provisions and limitations on use set forth in Section 15. These documents and production materials shall be immediately surrendered to Customer upon demand, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

Supplier shall give access to Confidential Information only to employees who are directly entrusted with the execution of the order and whose knowledge of the Confidential Information is essential for the execution of the contract and who are bound by a prior written non-disclosure agreement. Supplier shall ensure that all documents and materials which might contain Confidential Information of Customer are safeguarded and protected against access by third parties and unauthorized employees.

Supplier requires explicit written permission if it wishes to indicate or draw attention to the business relationship with Customer in advertising materials or publications of any kind.

If there are grounds for suspecting infringement of these confidentiality provisions, Supplier shall bear the burden of proof for demonstrating that the Confidential Information was already known to the general public on the contract date or was disclosed without its involvement or responsibility.

Vis-a-vis Customer Supplier is jointly and severally liable along with any third party to whom Confidential Information was disclosed by Supplier, or by whom Confidential Information was disclosed to Supplier, for any infringement of the confidentiality provisions herein.

Supplier hereby acknowledges that infringement of Supplier's confidentiality obligations could cause immediate or irreparable damage, for which statutory damages might be inadequate. For each case of infringement of this contract by Supplier and/or a person to whom Supplier has disclosed the information in question, Supplier shall pay Customer liquidated damages of EUR 50,000, regardless of further claims or legal remedies of Customer. The defense that a series of infringements should be treated as one continuous infringement is barred. Insofar as legally permissible, the contractually agreed liquidated damages shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

Customer shall not be liable for ensuring that the use of the Confidential Information does not infringe the intellectual property rights, copyright and/or other rights of third parties, and/or for damages caused to Supplier or a third party. Customer is completely at liberty to utilize and make use of the Confidential Information in any manner it wishes.

Section 15 herein shall continue to apply after the contractual relationship has been ended or has ceased.

## **16. Work Results; Granting of Rights**

Supplier shall not acquire any rights based on these T&Cs of Purchase unless they are granted explicitly. In particular, Customer retains the sole rights to and exclusive ownership of all intangible and tangible items which are made available to Supplier (if applicable) in connection with the provision of the Goods & Services. They may only be used by Supplier during the period in which it has a business relationship with Customer and only in order to provide the Goods & Services to/for Customer, and otherwise shall be subject to the confidentiality provisions in Section 15.

Only Customer is entitled to the documents and work outcomes (including tools) (hereinafter jointly referred to as "Work Outcomes") which are created in connection with the contract and to exploit them, and as of the creation date they shall be transferred, passed and granted to Customer.

Customer shall be notified regarding any Work Outcomes immediately after their creation. As of the creation date, Supplier transfers to Customer sole ownership of and exclusive intellectual property rights for the work outcomes to the full legally permissible and transferable extent, in particular the sole right to apply for protective rights or invoke priority rights, and those rights shall pass to Customer accordingly. In addition, Supplier grants Customer exclusive utilization rights to the Work Outcomes when they are created. In the case of copyright-protected outcomes, Supplier hereby irrevocably grants Customer the exclusive rights to utilize the Work Outcomes without chronological, material or geographic limitation based on all currently known or future types of exploitation, and in particular to duplicate, disseminate, lease and lend, transfer or send them via wireless or wired connection, or present, show, or display them and make them available, and to transfer all rights to the Work Outcomes to third parties gratis or against payment, or to grant sublicenses, and in doing so permit the third parties to utilize the Work Outcomes to the same extent. Furthermore, Customer is entitled to adapt the Work Outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or to transfer them to third parties.

Moreover, only Customer is entitled to exercise disposal over, utilize or decide on the use of created Confidential Information which is ineligible for IP protection, including business and commercial secrets.

Supplier therefore hereby confirms that Supplier no longer holds those rights. No separate remuneration shall be due; all transfers and/or granting of rights shall be deemed fully satisfied by the agreed remuneration for the Goods & Services, regardless of the type and scope of use and exploitation by Customer. Therefore, Supplier hereby attests that in particular it does not have any prior use rights to the respective Work Outcomes. Based on and in return for the aforementioned remuneration, Supplier conclusively and irrevocably waives all claims and information rights arising from inventions and all other protective rights relating to the Work Outcomes.

Applications for protective rights shall be made by Customer at its own discretion and maintained by Customer in its own interest.

Supplier shall ensure that Supplier has and holds all necessary rights to ensure that ownership and/or transferable rights, including intellectual property rights to the Work Outcomes as set forth herein, can be completely and conclusively transferred to Customer with legal effect, and that exclusive utilization rights to the Work Outcomes can be granted. This applies in particular to rights arising from employee inventions and/or rights to outcomes arising from work and labor contracts. To accomplish that, before any information about a contractual project is handed over, and before the relevant individuals on Supplier side who will perform work relating to the Goods & Services actually become involved in the contractual project, Supplier shall enter into the necessary rights transfer declarations with those individuals.

Insofar as Supplier holds existing industrial property rights or other rights which could prevent Customer and/or its customers/business partners from exercising its rights under these T&Cs of Purchase or using the Goods & Services in question, Supplier, at no charge, hereby grants Customer the right of joint use, which shall be worldwide, perpetual, continuous, unlimited (thus in particular shall be usable by Customer in connection with further developments and/or improvements), and applicable to customers and business partners of Customer, and Supplier shall ensure that the right of joint use is also granted by third parties.

## **17. Shipping, Customs and Export Controls**

### Shipping

Supplier shall ensure to fulfill all provisions set down in the respective applicable version of Customer's logistics guideline. The logistics guideline can be consulted at the following link:

<https://www.miba.com/en/agb/>

Unless agreed otherwise in writing in a given case, the Incoterm FCA (named place) according to Incoterms 2010 shall apply to all deliveries. The goods shall be packed and prepared for shipment properly in a manner suitable for shipping by Supplier. In addition, the following provisions are applicable:

a) The department, reference number, order number and order date shall be shown on all letters, delivery notes, dispatch notes, invoices and similar documents. Each order shall be handled separately throughout written correspondence.

b) Supplier's delivery notes shall in particular contain the following information:

- Customer's order number and order item
- Customer's material number (if shown on the order)
- manufacturer
- complete type designation
- volume and metric sales unit
- any quality assurance documents which accompany the goods
- delivery lot, batch or date code (if applicable)
- country of origin and customs tariff number

c) The department, reference number, order number and order date shall be shown on the rear of the consignment note or detachable portion of the express delivery or postal address label. The exact consignment note address indicated by Customer shall apply. Supplier shall be liable for damages, costs and expenses incurred by Customer as a result of an inaccurate declaration and/or address.

d) If the goods are handed over to a freight forwarder, on the day of dispatch Supplier shall send Customer separate written notification indicating that handover has taken place and the handover date (dispatch note); invoices shall not be deemed dispatch notes.

e) Supplier shall be liable in full for damages, costs and expenses (demurrage costs, shunting costs, stock transfer costs etc.) incurred by Customer due to Supplier's failure to comply with the above provisions. Any shipments which for such reasons cannot be accepted shall be stored at Supplier's cost and risk until Customer can facilitate handling by sending proper documents. Customer is entitled to immediately check the contents and status of any such shipments, without thereby establishing grounds for an obligation to perform inspections or send defect reports.

f) Any separate shipping instructions issued by Customer shall be followed in all instances. The costs of damages incurred by Customer due to failure to comply with shipping regulations shall be borne by Supplier.

### Customs

Supplier shall ensure that the documents accompanying the consignment contain all data relevant to foreign trade and all relevant data, information and documents for the correct and complete lodging of a customs declaration. This refers especially to the subsequent data and information:

- Value (including currency)
- Customs Tariff Number
- Country of Origin
- Weight
- Commercial Description of Merchandise
- Incoterm (including named place)

Supplier shall be fully liable for all damages, costs and expenses arising from incorrect or incomplete information and data on accompanying shipping documents.

Supplier is responsible for the correct exportation of Goods & Services from its customs territory and shall comply with all associated legal obligations. All fees and charges incurred in connection with the export from Supplier's customs territory shall be borne by Supplier.

Unless agreed otherwise, Customer bears the responsibility for correct import customs clearance in the country of destination and pays relevant import duties and taxes.

For intra-EU shipments, Supplier shall issue a long-term supplier's declaration to Customer in accordance with Appendix 22-16 of the Implementing Regulation (EU) 2015/2447 based on the applicable regulations of preferential origin of goods. For issuing those documents, Supplier shall use forms provided by Customer. Supplier undertakes to provide those documents unsolicited within the first four weeks of each calendar year. The period of the validity of the long-term supplier's declaration shall be at least one year. Supplier undertakes to inform Customer immediately if this declaration shall be no longer valid or if Supplier notices that declarations issued in the past have been wrongly issued.

For other cross-border shipments between countries or groups of countries having a free trade agreement/preferential trade agreement in place, Supplier shall ensure to issue and enclose a relevant proof of preferential origin to enable Customer to make use of the free trade/preferential trade agreement. Supplier shall ensure to comply with the applicable regulations of the trade agreements. If Supplier cannot provide a plausible justification that the issuance of a proof of preferential origin was not possible according to the rules of the free trade/preferential trade agreement, Customer retains the right to charge relevant duties that have been assessed due to missing or faulty proof of preferential origin to Supplier.

### Export Controls

Supplier undertakes to inform Customer separately in writing if provided Goods or Services (including Software and Technology) are subject to export controls according to EU- US- or the national export control laws of the exporting country and included in export control lists (e.g. common list of military/defence related products of the EU, Annex I to EC Dual Use Regulation No. 428/2009, US-Munitions List, US-Commerce Control List). Supplier shall inform Customer immediately in case of any changes regarding licensing requirements of provided Goods or Services based on technical or legal changes, or based on official decisions.

Supplier undertakes to comply with all applicable export control regulations applicable to all contractual deliveries and/or services as well as their export and/or re-export. In addition, Supplier undertakes to comply with all EU- and US- sanctions regulations and to check its business partners and suppliers against current UN-, EU- and US-sanctions lists.

Any violation of these export control provisions shall entitle Customer to immediately terminate all existing contracts with Supplier due to significant grounds. Moreover, if Supplier is listed on an UN- EU- or US sanctions list, Customer reserves the right to terminate all business relations, payment flows and performance with immediate effect. Furthermore, in the event of infringement of any of these compliance provisions, Supplier shall comprehensively hold harmless, defend and indemnify Customer from and against any and all resulting damages and claims.



## **18. Cancellation of Contract**

Regardless of any other grounds for ending the contract set forth in these T&Cs of Purchase, Customer is entitled to terminate all contractual relations with immediate effect if there are significant grounds. The following in particular shall be considered significant grounds:

- a) Bankruptcy proceedings are opened for Supplier's assets, or opening of bankruptcy proceedings is rejected due to lack of assets;
- b) There are circumstances which make the proper provision of the Goods & Services impossible;
- c) Supplier itself or a person used by it to provide the Goods & Services infringes major contractual provisions or confidentiality obligations;
- d) There is a change in the direct or indirect legal or commercial means for exercising control at Supplier (change of control);

The ending of all or individual contractual relations shall not affect the validity of Sections 8, 10, 11, 12, 15, 16, 21, 22, 23, 24, 25 and 26, and those Sections shall continue to remain in effect after the ending of contractual relations. The transfer and granting of rights as described in Section 16 explicitly also apply to interim outcomes (if applicable) at the end of a contractual relationship.

## **19. Consent to Transfer of Contractual Relationship**

Supplier hereby agrees that Customer may transfer the contractual relationship as a whole to an affiliate of Customer (independently of the shareholding percentage). In such instances, based on written notification, the affiliate specified by Customer shall take over all obligations and claims arising from the legal relationship and shall assume all of Customer's organizational and other rights. However, Customer shall continue to be jointly and severally liable to Supplier for obligations arising from the contractual relationship, including payment of the remuneration.

## **20. Duties and Charges**

Unless agreed otherwise in writing in a given case or stipulated otherwise in applicable legislation, all duties and charges which are payable based on the Goods & Services shall be borne by Supplier. This also applies if Customer has to obtain an international import certificate in order to import the goods in question.

## **21. Compliance**

Supplier shall comply with the Miba Code of Conduct, which is available on the Internet at:

<http://www.miba.com/en/coc>

The Miba Code of Conduct is incorporated by reference into the contract between Supplier and Customer. Supplier hereby declares that it is familiar with the Miba Code of Conduct and that it shall ensure that its employees and its subcontractors, suppliers or third parties of any kind who are used by Supplier to fulfill the contract comply with it. Supplier shall immediately notify Customer regarding any activities on the part of its employees or its subcontractors, suppliers or third parties of any kind who are used by Supplier to fulfill the contract which constitute an infringement of the Miba Code of Conduct. Supplier shall help Customer to obtain information relating to any infringement of the Miba Code of Conduct.

Furthermore, Supplier hereby declares that it will comply with all legislation, regulations and other standards of the export country, import country and destination country which are applicable as of the relevant date. Supplier shall ensure that the aforementioned requirements are also forwarded to subcontractors, suppliers or third parties of any kind who are used by Supplier to fulfill the contract

Any violation of the Miba Code of Conduct shall entitle Customer to immediately terminate all existing contracts with Supplier due to significant grounds.

## **22. Data Protection**

If Supplier processes personal data for and on behalf of Customer in connection with the provision of Goods & Services, it shall comply with relevant legislation, in particular Austria's Data Protection Act [*DSG*] (as amended from time to time) and the EU General Data Protection Regulation. Accordingly, Supplier shall enter into a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Furthermore, if data are transferred – to Supplier or its subcontractors – to a recipient domiciled in a country outside the European Economic Area and this is absolutely necessary for the performance, Supplier is obligated to conclude EU standard contract clauses or equivalent contract templates issued by the European Commission as appropriate safeguards as defined in Art. 46 Paragraph 2 lit. c and d of the General Data Protection Regulation.

## **23. Place of Fulfillment; Place of Jurisdiction**

The place of fulfillment for both parties is the location specified by Customer on the order, otherwise Laakirchen, Austria.

The sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, Customer, at its own discretion, is also entitled to assert claims against Supplier before the court with subject matter jurisdiction for Supplier's headquarters.

## **24. Applicable Law**

This contract, including the questions of whether it is legally valid and/or void, its advance effects and aftermath and its interpretation, are subject to Austrian law only, to the exclusion of conflict of law provisions and UN Convention on the International Sale of Goods (CISG).

## **25. Severability**

If a provision of these T&Cs of Purchase is ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the other provisions. In such cases, the provision shall be replaced by one which in terms of commercial outcome approximates to it as closely as possible and is not ineffective, invalid or unenforceable. The same applies to contractual gaps.

## **26. Written Form**

In order to be valid, any changes or amendments to these T&Cs of Purchase or other contractual agreements between Customer and Supplier shall be carried out in writing. The same applies to deviations from the requirement regarding written form.