

**General Conditions of Purchase  
of  
4activeSystems GmbH**

Version dated 1<sup>st</sup> of May 2015

**1. Validity of the Conditions of Purchase**

1.1. If no other agreement is expressly reached, only the conditions below, which have been made known to the other party to the contract, shall apply to purchases by 4activeSystems GmbH (hereinafter referred to as "4A"). The General Conditions of Purchase of 4A shall also apply to all future contractual relationships with the other party to the contract.

1.2. General terms and Conditions of the other party to the contract shall not form a constituent part of the contract, even if 4A does not expressly reject them. The other party to the contract shall waive his own general terms of business, especially any defensive clauses, by accepting an order, issuing a tender or signing a contract with 4A.

1.3. If 4A accepts the goods/services without expressly rejecting the said conditions, it shall in no case be possible to derive from this that 4A would have accepted the general terms of business of the other party to the contract.

**2. Purchase Order, Tender, Order, Order Confirmation**

2.1. Each purchase order granted by 4A requires an individual procedure. Linking a purchase order legally with other orders granted to the party to the contract shall only be possible if this was agreed in advance in a written skeleton agreement.

2.2. Tenders shall be non-binding and free of charge for 4A. When submitting his tender, the party to the contract must keep to the quantity, nature and design stipulated in the enquiry or invitation to tender and, if a deviation should arise, he must make express reference to the matter. He shall be bound to his tender for three months after receipt of the tender.

2.3. Only orders granted in writing shall be binding for 4A. Orders by e-mail may only be undertaken by the party to the contract if this was expressly agreed with 4A. Verbal orders and agreements must be confirmed subsequently in writing by 4A in order to be valid. Orders must be confirmed in writing immediately by the other party to the contract. If the other party to the contract does not confirm the order within 10 days of receipt, 4A shall be entitled to cancel the order. 4A may demand amendments to the subject of the order, even after the order has been granted, provided that this is reasonable for the other party to the contract. If an amendment of this nature is made, appropriate account must be taken of the effects on both parties, especially with regard to additional or reduced costs and delivery dates.

2.4. The other party to the contract must confirm the order from 4A within three working days of receipt of the order, making a binding statement of the delivery period.

2.5. Order numbers, the reference and date of letters from 4A must be stated in all correspondence.

**3. Prices, Payment, Invoice**

3.1. The prices stated in the order or the tender shall be maximum prices, which must be adjusted in favour of 4A if amendments are made. Customs duties, taxes, legal fees and transport costs, packaging, insurance or other costs which are not stated in the tender and in the order shall be borne by the other party to the contract. The prices shall be exclusive of VAT.

3.2. The other party to the contract shall undertake to bear the costs for disposal of packaging or shall collect the packaging free of charge from the delivery address.

3.3. No payments or expenses for visits shall be granted. All product presentations, sample operations and test runs – even before the contract is signed – shall be free of charge for 4A.

3.4. Order numbers, the reference and date of letters from 4A must be stated in all invoices. Invoices submitted incorrectly shall not be accepted, shall not trigger a date when payment is due and shall not be deemed to have been received at 4A until the date when they are corrected. The respective stipulations of the legislation on the submission of invoices must be observed without exception.

3.5. 4A shall settle invoices within 30 days after complete defect-free fulfilment with 3% discount or within 60 days net, after receipt of invoice.

3.6. The mere acceptance (verbally or in writing) of goods or services, or the making of payments shall not form either an acceptance procedure or a waiver of rights of whatever kind.

#### **4. Despatch, Packaging, Transfer of Risk**

4.1. 4A shall be informed of every delivery, immediately after it has been implemented, in the form of a despatch note which is broken down precisely into type, quantity and weight. Despatch notes, consignment notes, invoices and all correspondence must contain the 4A order number. 4A shall only accept the quantities or numbers ordered. Over- or under-deliveries shall only be possible after reaching agreement with 4A in advance. If certificates for tests on materials have been agreed, they shall form a significant constituent of the delivery and must be enclosed with the delivery together with the delivery paperwork.

4.2. Despatch shall take place in accordance with the Incoterm (2000) agreed in the order.

#### **5. Delivery, Arrears of Delivery, Place of Fulfilment, Force Majeure**

5.1. If delivery is made earlier than agreed, 4A shall reserve the right to return the goods at the cost and risk of the other party to the contract. If the goods are not returned following delivery earlier than agreed, the goods shall be stored at 4A until the delivery date at the cost and risk of the other party to the contract. If delivery is made earlier than agreed, 4A shall reserve the right not to make payment until the agreed due date. 4A shall only accept part deliveries after express prior agreement.

A delivery note must be enclosed with each delivery, which must contain the complete designation and the quantity supplied of each delivery item in accordance with the order, plus the 4A-order number. Acceptance will be refused without exception if delivery is made without the corresponding delivery note.

5.2. The delivery dates agreed shall be binding. Receipt of the goods at the point of receipt or use specified by 4A and successful acceptance on time shall be authoritative for adherence to the delivery date or delivery period.

5.3. If the other party to the contract recognises that an agreed date cannot be met for whatever reason, he must inform 4A of this immediately, stating the grounds and the probable duration of the delay in writing. The other party to the contract shall undertake to reimburse 4A for all direct and indirect losses caused by the delay. Acceptance of the delayed delivery by 4A shall not imply that claims for reimbursement will be waived.

5.4. If the agreed delivery date is not met, after an appropriate period of grace has been set by 4A and this has elapsed fruitlessly, 4A shall be entitled to elect to demand compensation for non-fulfilment or to obtain a replacement from a third party or to withdraw from the contract.

5.5. If no different agreement was expressly reached, the place of fulfilment for the delivery obligations shall be the delivery address named by 4A in the order. If no delivery address is stated, the other party to the contract must undertake to ask for information from the order address.

5.6. Force majeure and labour disputes shall exempt the parties to the contract from their obligations to perform for the duration of the disruption and to the extent of its effect. The parties to the contract shall undertake, within the scope of reasonable behaviour, to provide the necessary information immediately and to adjust their obligations to the changed circumstances to the best of their knowledge and belief. 4A shall be exempted from the obligation to accept the goods/services ordered entirely or partially and shall even be entitled to withdraw from the contract if the goods/services can no longer be used at 4A – taking account of economic aspects – because of the delay caused by force majeure or the labour disputes.

#### **6. Acceptance**

6.1. If the goods or services have been supplied in a condition in accordance with contract or if any defects found have been rectified, they shall be accepted by 4A. If provision has been made for test operation, acceptance shall take place after the specification parameters have been reached and maintained during the entire test period agreed.

6.2. Acceptance shall take place exclusively when the 4A- acceptance report is signed. An order represents a complete service, defects in part of it shall entitle 4A to refuse acceptance of the entire order.

If used goods were not expressly requested in the order, the other party to the contract shall guarantee that he will only supply brand new products.

## **7. Penalties**

4A shall be entitled, regardless of any fault on the part of the other party to the contract and regardless of any evidence of an actual loss, to charge a penalty of 0.5% per calendar day's delay commenced up to a maximum of 15% of the total order figure. The penalty shall be based on the order value of the part delivered late if the part delivered on time can be of practical and economic use in isolation. Proof of this must be provided by the other party to the contract. 4A reserves the right to enforce the penalty instead of fulfilment or to make a claim for compensation over and above the penalty. If there is a delay in delivery which affects the entire order or a part of the latter, 4A shall be entitled to withdraw from the contract, or from parts of it, after setting an appropriate period of grace. If express fixed deadlines are not met, the parties to the contract shall agree on a penalty of 15% of the total order value, regardless of fault on the part of one of the parties to the contract and regardless of evidence of an actual loss. 4A reserves the right to make claims for compensation over and above this. These penalties shall not be subject to the right to moderation by a judge.

## **8. Warranty, Guarantee, Compensation, Product Liability**

8.1. The other party to the contract shall be liable in accordance with the stipulations of the legislation for legal and material defects. He shall guarantee the careful and technically correct fulfilment of the contract, especially adherence to the specifications laid down and other stipulations on performance of 4A in accordance with the most up to date state of science and technology, plus the quality and fitness for its purpose of the delivery in so far as the material, design and performance is concerned and the documents which form a part of the delivery (drawings, plans etc.). The other party to the contract shall guarantee that the products supplied correspond to the pertinent legislation and standards of the country, for which the products are intended.

8.2. Deviating from § 933 ABGB, it shall be the case that defects can be enforced in writing against the other party to the contract as well as before the court. Warranty claims enforced in writing within the warranty period can also be enforced before the court after expiry of the warranty period. Deviating from § 1298 ABGB it shall be the case that the other party to the contract has a duty to provide proof that he was prevented from fulfilling his contractual or legal obligations for reasons which were not his responsibility. The other party to the contract shall also have a duty to prove that he is not guilty of slight or gross negligence. Deviating from § 924 ABGB, it shall be the case that until the contrary is proved, it shall be assumed that the other party to the contract is liable for defects which are present on hand-over if the defect becomes apparent within two years of the hand-over.

8.3. §§ 377 onwards of the HGB (commercial law code) shall not be applicable. 4A shall therefore not be under any obligation to inspect and issue a notice of defect. Enforcement of claims regarding defects in writing shall suspend the warranty period and interrupt periods of grace for payment until these defects have been rectified in full.

8.4. The warranty period shall be at least two years for movable goods, for permanently fixed ones at least five years from acceptance of the goods or services by 4A. The supplier shall guarantee freedom from defects during the entire warranty period. These periods shall commence again from the beginning where services have been undertaken under warranty or guarantee provisions. Where components supplied could not remain in operation because of defects covered by the warranty, a warranty which is already running shall be extended by the duration of the interruption of operations.

8.5. 4A shall be entitled in every case, even where defects can be rectified, to convert the contract or parts of it where a period of grace has been set of 14 days for rectification of defects which has expired without effect. The costs to be borne by the supplier when rectifying defects shall also include the costs of packaging, freight and import, the work required for dismantling and re-erection, travelling expenses and the rectification of defects at 4A.

8.6. The term, guarantee, signifies that all defects which arise in the course of the guarantee period must be rectified immediately by the other party to the contract.

8.7. Regardless of the latter, the other party to the contract must make compensation of the amount of the actual loss incurred by 4A (including lost profit). If a third party, for example a customer of 4A, makes claims with regard to defective or delayed delivery, the other party to the contract must undertake to

indemnify 4A and protect the latter from any action, if the former's defective delivery was the cause of the loss, and for the total loss, even if several causes of loss are combined together. The term loss shall also include all costs which 4A incurs in or out of court in establishing the claim, defending against the claim and enforcing the claim.

8.8. The other party to the contract shall guarantee on his own behalf and that of his legal successors that the goods supplied are free from defects within the meaning of the Austrian law on product liability (PHG) in the respective currently valid version with regard to design, production and instructions. He shall specifically guarantee that no defects whatsoever were detected in the product in accordance with the current status of science and technology at the time it was marketed. The other party to the contract shall give an undertaking that he and his legal successors will monitor the product. He must inform 4A if it should become apparent subsequently that certain characteristics of the product are hazardous. If a claim is made against 4A, the other party to the contract shall undertake to indemnify 4A against any claim or loss. The other party to the contract shall also undertake to name the manufacturer or importer if requested to do so at any time by 4A. In addition, the other party to the contract shall consent to take out appropriate product liability and public liability insurance. Confirmation of the insurance must be submitted.

## **9. Intellectual Property Rights**

9.1 The other party to the contract shall guarantee that all deliveries are free from the protected property rights of third parties and specifically that delivering and using the items which are the subject of the delivery does not infringe the patents, licences or other protected rights of third parties. The other party to the contract shall indemnify 4A and its customer and protect them from any action with regard to any claims made against them and covered by this section (including legal costs). 4A shall be entitled to obtain approval to use the goods and services affected from the entity with entitlement at the expense of the other party to the contract.

9.2 Upon full payment of the price for the work and/or service the other party to the contract shall grant 4A an exclusive right to use the work and/or service, which shall not be limited in time, place or content or in any other way; this shall include but not be limited to the right to reproduce, edit, process, translate and distribute the relevant works and/or services and the right to transfer such rights to use the works and/or services to third parties. In the case of a justified price reduction such rights to use the works and/or services shall pass to 4A upon payment of the reduced price. 4A shall not be obliged to add a manufacturer information or copyright note. 4A shall be entitled to take the measures necessary to protect such rights against third parties in its own name, in particular to apply for registration of a proprietary right to public registers and to take measures out of or in court against infringement of such rights. Engineering inventions that have been developed and are presumably capable of protection by patent or utility patent shall pass to 4A upon development.

## **10. Ownership Conditions**

10.1. 4A shall acquire the unrestricted ownership of the goods or services supplied after the latter have been handed over and accepted. The same shall apply to the documents supplied with the delivery by the other party to the contract. 4A shall also acquire an unlimited right to use the software supplied. By making the hand-over, the other party to the contract declares and guarantees that he has full authorisation to dispose of the goods and that the goods are specifically not subject to extended retention of title by a third party, unless the other party to the contract names this third party, at the latest when the contract is signed.

10.2. Material of any kind which has been provided shall remain the property of 4A. They must be marked as such and must be stored, designated and administered separately. The other party to the contract must make compensation if there is a reduction in value or a loss. Material provided may only be used for 4A orders. If the material provided is processed, remodelled, combined or mixed with other items, 4A shall acquire sole ownership of the new item. The other party to the contract shall grant this free of charge for 4A.

10.3. Ownership and copyright for 4A documents, which the company has handed over to the other party to the contract, shall remain with 4A. The documents shall be handed over immediately on request with all copies or reproductions. 4A documents may only be used for the purposes stipulated within the scope

of the contract. If contraventions arise, the other party to the contract shall be liable for the entire loss without any restrictions (including intangible losses).

## **11. Data Protection**

The other party to the contract must maintain the confidentiality of data of which he becomes aware and/or the results and part results he has compiled and this shall apply regardless of the way in which he became aware of the data. The other party to the contract shall undertake to protect these data from access by third parties and shall instruct those working for him to maintain confidentiality accordingly.

## **12. Miscellaneous Stipulations**

### **12.1. Design Documents:**

The other party to the contract may not use, reproduce or make accessible to third parties for purposes which lie outside the contract design documents, which were handed over to him by 4A for manufacturing the items to be supplied. On request, the other party to the contract shall submit plans, design documents, technical calculations etc, which refer to the item to be supplied, to 4A for approval and after they have been proved correct, shall hand over a copy to 4A if the latter needs these documents for normal use or repair work. On request, 4A must supply records to the other party to the contract for the most important spares. Approval of such plans, design drawings, technical calculations etc shall not affect the warranty obligations of the other party to the contract. Moulds, tools, printed documents etc which were invoiced to 4A shall become the company's property on payment. They shall be kept and insured by the other party to the contract free of charge for 4A and shall be handed over to 4A on request.

### **12.2. Confidentiality:**

The other party to the contract shall treat signing the contract as confidential and may only make reference to business connections with 4A in advertising material and lists of references after receiving written consent from 4A. The parties to the contract shall undertake to treat all commercial or technical details as a business secret which are not public knowledge and of which they become aware because of the business relationship. Subcontractors must be subjected to a corresponding obligation by the other party to the contract. The other party to the contract shall be liable for every loss, including intangible ones, which 4A suffers as a consequence of contravention but must at least pay a minimum contractual penalty of 50 % of the total order value per infringement.

### **12.3. Safeguarding Clause:**

If individual parts of these General Conditions of Purchase should be or become ineffective, invalid and/or unworkable or impossible to implement, this shall not affect the effectiveness, validity or feasibility of the other stipulations of these General Conditions of Purchase.

### **12.4. Termination of Contract:**

If no different agreement is reached, continuous obligations on the part of 4A may be cancelled with three months' notice.

4A may cancel contracts with immediate effect on important grounds. This shall include the other party to the contract committing gross or repeated infringements of his contractual obligations or if he becomes the subject of insolvency proceedings or if such a petition is rejected for lack of assets to cover the costs. If a justified withdrawal takes place, the other party to the contract shall bear the costs for returning the goods. The risk shall be transferred to the other party to the contract at the time when they are despatched from 4A.

### **12.5. Ban on Assignment:**

The other party to the contract shall not be entitled to assign his rights and obligations to third parties or to assign his claims against 4A to third parties without the prior written consent of 4A.

### **12.6. Ban on Offsetting:**

The other party to the contract may not offset his own accounts receivable against the accounts receivable of 4A. This shall exclude amounts allocated by court judgements and debts expressly recognised in writing by 4A.

12.7. Legal Successor:

4A is shall be entitled to transfer rights and obligations from the contractual relationship with the other party to the contract to companies in which 4A has a holding of more than 25 % or to companies which have a holding of more than 25% in 4A. No right to cancel shall arise for the other party to the contract from a transfer of this type.

12.8 Written Form:

Any declarations, notifications etc directed to 4A must be in writing and must include an original signature in order to be valid.

12.9 Delivery Dates

Delivery dates shall be deemed to have been agreed to be fixed. If there is a delay, no period of grace need be set or withdrawal made; these take place automatically.

12.10 Applicable Law, Place of jurisdiction:

Contracts complying with these general conditions of purchase shall be subject exclusively to the law of the Republic of Austria, excluding the IPRG, the reference forward [transmission to the law of a third country] rules of the European Convention (EVÜ; BGBl [Official Federal Gazette] III 1998/208) and the UN-Convention on Purchase Law dated 11.4.1980 (BGBl 1988/96).

To the extent that there are no mandatory legal provisions to the contrary, the sole location competent for deciding on all disputes arising shall be the Commercial Court of Vienna, Inner City.