NATUS

INDUSTRIAL SOLUTION SYSTEMS

# General Terms and Conditions of Purchase of NATUS GmbH & Co. KG

for use in transactions with entrepreneurs, legal entities under public law and special funds under public law

## I. General provisions

For all business relationships between us and the Supplier, including all offers, deliveries and services of the Supplier, our General Terms and Conditions of Purchase are exclusively applicable. Any conditions deviating from or supplementing these General Terms and Conditions of Purchase shall not apply, even if we do not expressly exclude them or if the Supplier declares his intention to only deliver according to his terms, or if we accept the Supplier's deliveries and services with knowledge of his General Terms and Conditions without objection or make reference to Supplier correspondence containing or referring to General Terms and Conditions of the Supplier or third parties.

These General Terms and Conditions of Purchase shall apply in their prevailing version also to prospective transactions between us and the Supplier as well as to his future offers, deliveries and services, even if these General Terms and Conditions of Purchase have not been expressly agreed anew or referred to. We shall promptly inform the Supplier of changes of these Terms and Conditions of Purchase.

Purchase Order and Purchase Order acknowledgements, as well as their modifications and amendments, shall be in writing. Ancillary verbal agreements during conclusion of contract shall only be applicable if the Purchaser agrees to them in writing. Amendments and/or supplements of contracts concluded between us and the Supplier on the basis of these Terms and Conditions of Purchase, as well as amendments and/or supplements of these Terms and Conditions of Purchase themselves, require the written form. With the exception of managing directors and authorised officers, our employees are not authorised to negotiate verbal agreements deviating from this policy.

All expenses of the Supplier during the tender and negotiation stage shall be free of charge to us, unless otherwise agreed in writing.

A deviating acknowledgement of our Purchase Order by the Supplier requires express written notification. Any Supplier acknowledgement deviating from our Purchase Order is considered a new offer by the Supplier and requires our written acknowledgement.

If the Supplier fails to acknowledge the Purchase Order within 14 days, delayed acknowledgement by the Supplier is considered a new offer and requires our written acknowledgement.

The Supplier is obliged to automatically notify us of visible faults and omissions in the order or Purchase Order (including accompanying documents) prior to acceptance.

Complete assignment or subcontracting of the ordered deliveries and services to a third party is only permitted with our written consent.

Costs of insuring goods for the time prior to transfer of risk, in particular transport and cargo insurance, is not assumed by us and is to be borne by the Supplier.

Legally relevant declarations and notifications provided or to be provided to us by the Supplier after conclusion of contract require the written form to become effective.

Retention of title by the Supplier only applies to the extent that it is related to the payment to be made by us for the respective product delivered under retention of title. Any expanded or extended retention of title by the Supplier is excluded.

The Supplier is not entitled to make partial deliveries without our prior express consent.

## II. Completeness Clause

Deliveries and services shall be carried out in a way that the contractually intended usability is given, in particular that the Deliveries and services are completely appropriate for the agreed purpose, even if individual items required have not been mentioned in detail in our Purchase Order, which are necessary for the delivered item/service to function.

## III. Supply by the Purchaser

Items provided by us shall remain our property and are not allowed to be used for any purposes other than contract fulfilment. Any materials provided by us shall be stored by the Supplier separately and Supplier shall adequately insure them at his own expense against damage, destruction and loss.

Any processing, mixing or combination of materials provided by us shall be performed on our behalf, regardless of whether these are handled by the Supplier or by us, so that in any case we are considered the manufacturer and shall acquire property rights to the product according to legal requirements.

## IV. Delivery Dates / Contract Penalty

The agreed delivery dates shall be binding. Deliveries prior to the agreed delivery dates shall only be permissible with our written confirmation. Timely receipt of deliveries without assembly or installation depends on receipt of the merchandise at the place of fulfilment. For the timely receipt of deliveries with installation or assembly, as well as services, their rendering at the place of fulfilment in a condition suitable for formal acceptance is definitive.



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The Supplier shall immediately report any delay or noncompliance with delivery dates. If the Supplier is in delivery delay, we are entitled to demand a penalty for every commenced week of delay to the amount of 1% of the Purchase Order value, but overall not more than 5 % of the Purchase Order value, whereby the Purchase Order value used to calculate the penalty is based on the delivery or service affected by the delay. We are allowed to demand the penalty in addition to fulfilment, in which case we are required to claim the penalty no later than upon final payment. We are entitled to demand the penalty as a minimum amount from the Supplier relating to the damage caused by delay according to legal regulations, whereby the penalty is to be applied to the damage caused by delay to be compensated by the Supplier. Any claims above and beyond that amount related to the delay shall remain unaffected by the contract penalty provision.

In the case of disputes, the Supplier shall not be entitled to stop the execution of the Purchase Order and/or to respectively withhold the deliveries/services.

The place of performance for the Supplier's deliveries and services shall be the delivery address as stated in the Purchase Order. If the delivery address is not stated, our headquarters in Trier shall be considered the place of performance.

## V. Shipping and Price Setting

All items subject to be delivered shall be packed and dispatched appropriately. Agreed packing and shipping instructions shall be fully complied with. Delivery notes shall be attached to each delivery. Each document shall bear the order numbers and the labelling stated in the Purchase Order. At the latest on the day of shipping, a notification of dispatch is to be sent to us. Any additional costs for the Purchaser due to non-observance of the above mentioned terms shall be charged to the Supplier.

The prices stated in the Purchase Order are binding and are free to the place of performance, excluding value-added tax and including all services and ancillary services of the Supplier (e.g. assembly, installation) and including all ancillary costs (e.g. packaging, transport costs, incl. insurance).

## VI. Quality Assurance/Inspections (especially Receiving Inspections)

Our duty to inspect within the scope of commercial duties to inspect and give notice of defects is limited to such defects that are clearly visible through external assessment (including shipping documents) as well as during a quality inspection in a random sampling procedure (e.g. shipping damage, wrong and/or inferior deliveries). Our duty to give notice of defects for hidden defects shall remain unaffected by this.

At any rate, notices of defects are considered prompt and in due time if we notify the Supplier of a defect within five working days, in case of obvious defects starting from when we receive the merchandise, in case of hidden defects, from the time of their discovery.

The Supplier shall be obliged to maintain a generally accepted quality management system (e.g. ISO 9001) and to be certified regularly by an independent party.

## VII. Transfer of Risk

The risk of accidental loss and accidental deterioration of the goods will be passed on to us with the handover of the delivery at the place of fulfilment. The transfer of risk for plant, machinery and technical equipment shall take place after successful completion of the function test.

## VIII. Invoicing / Payment

All invoices shall correspond to the legal requirements, contain the Purchase Order number and enable an examination on the basis of the prices stated in the Purchase Order.

The following terms of payment shall be in effect: The agreed payment for delivery or service is due within 30 calendar days after complete delivery or service and receipt of a proper invoice submitted to us. We can pay within 14 days after complete delivery or service and receipt of invoice, minus a 3% cash discount. This rule also applies in cases of pre-payments made by us. The aforementioned terms of payment apply accordingly for partial services or partial deliveries.

In case of non-conforming delivery or deficient delivery, we are entitled to retain a reasonable portion of the payment without loss of discount/deduction rights until full compliance and performance have been carried out by the Supplier. Cash discounts are also permissible when setting off or retaining title due to defects.

Payments do not constitute acceptance or partial acceptance in a legal sense. The final payment, too, shall not represent an acknowledgement of the goods as being free of defects.

For the occurrence of default on our part, the statutory provisions shall apply, whereby in deviation to this, a written reminder by the Supplier is necessary in any case.

If we are in default of payment, the interest on arrears shall be 5 percentage points above the base lending rate. We do not owe any maturity interest.

## IX. Assembly Works

For services carried out for us on our premises or on the premises of our customer or end user (including construction sites and project locations of the customer or end user), the Supplier is to follow our instructions. Any accidents and damage is to be reported immediately. Safety guidelines are to be observed.



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The Supplier shall deploy only qualified and experienced personnel. Certificates of qualification and proof of payment of social insurance contributions shall be presented to the Purchaser upon request.

## X. Set-Off

The Supplier shall be entitled to set-offs and retention only in case of counterclaims that are undisputed and/or legally established.

## XI. Other Liabilities

The Supplier shall be liable in accordance with legal regulations. Our release and approval of drawings or other technical documentation of the Supplier shall not affect the exclusive responsibility and liability of the Supplier for his scope of supplies and services.

The Supplier shall hold us harmless from third party claims for damages caused by defects or mistakes in the Supplier's delivery or service. In this regard, the Supplier shall bear all essential costs incurred by us – provided that the cause is due to the Supplier’s scope of delivery.

The Supplier is required to maintain general liability insurance with a EUR 5 million minimum sum of cover per personal injury/property damage – this, however, shall not limit the liability of the Supplier. The Supplier shall present a respective insurance certificate together with his Purchase Order acknowledgement.

## XII. Assignment

The Supplier shall assign his rights wholly or partly to a third party only with our written approval – which shall not be unreasonably withheld; this does not apply to financial claims.

## XIII. Liability for Defects

The Supplier shall warrant that the delivery or service complies with the agreed quality and is suitable for the intended purpose. Our rights relating to material and legal defects shall be governed by the law, but with proviso of the following rules:

The limitation period for warranty claims - unless otherwise agreed - is 36 months after the transfer of risk or acceptance.

In deviation from the above paragraph, the limitation period for warranty claims based on hidden defects is 48 months after the transfer of risk or acceptance.

Claims due to defects of title are not subject to limitation, if and to the extent that the third party right representing the defect of title can still be asserted against us.

We are also fully entitled to legal claims in case of deficient performance by the Supplier even if we did not detect the defect upon conclusion of contract due to gross negligence.

The Supplier shall bear the costs of inspecting deficiencies as well as supplementary performance, including possible costs of installation and de-installation. This shall also apply if it turns out that our notice of defects was unjustified and in fact no defect existed; our liability due to unjustified notices of defects remains unaffected with the proviso that we are only liable to the extent that we recognised or were grossly negligent in not recognising that there was no defect.

Upon rectification of defects, the liability period for defects of the concerned parts shall start again.

In case of defects, supplementary performance by the Supplier is to be made at our discretion in the form of repair or replacement delivery. If the Supplier does not comply with this obligation within a reasonable deadline set by us or if the supplementary performance has failed or is unreasonable for us (e.g. due to urgency, operational safety is endangered, impending damage to a disproportionate degree), we may remedy the defect ourselves at the Supplier's expense or have it remedied by third parties at the Supplier's expense and demand an advance payment from the Supplier. If the supplementary performance has failed or is unreasonable for us, there is no need to set a deadline. We shall inform the Supplier of circumstances such as these in advance wherever possible, at any rate without delay, however.

The Supplier is obliged to indemnify us from claims of third parties due to a product defect for which he is responsible, to the extent that the cause lies within the Supplier's sphere of organisation and authority, and he would also be liable towards third parties. If it becomes necessary to launch a call-back campaign due to the deficiency of the Supplier's delivery or service, the Supplier shall bear the costs associated with this.

## XIV. Regulations on Minimum Wage

a. Compliance with the Minimum Wage Act

The Supplier is obliged to comply with the legal obligations pertaining to him according to the Minimum Wage Act. This particularly relates to the duty of paying his workers the mandatory minimum wage, no later than the statutory due date.

b. Subcontractors and distributors

If the Supplier hires subcontractors to provide services, he shall have them provide a written guarantee under a contractual obligation that the workers are being paid at least the minimum wage by the statutory due date.

If the Supplier hires temporary workers, he shall have the staffing agency provide a contractual written guarantee that the workers are being paid at least the minimum wage within the statutory due dates.



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We may make the granting of approval for the deployment of a subcontractor or the deployment of temporary workers dependent upon whether the appropriate written obligation has been provided.

c. Right of inspection; Documentation and reporting duties

The Supplier shall undertake to provide us upon request with working time records and complete accounting of wages and salaries for complete review, so that we may verify whether the Supplier is paying his workers the minimum wage.

Likewise, the Supplier is to provide documentation upon request that disbursement of the minimum wage to workers occurs by no later than the statutory due date. He shall provide us all information necessary to successfully fend off any minimum-wage lawsuit according to § 13 Minimum-Wage Act (MiLoG) / § 14 Law for Posting Workers (AEntG).

In the event that the Supplier deploys a subcontractor or temporary workers by our prior consent, he shall in turn obtain the relevant rights to inspection from the subcontractor or staffing agency and subject it to relevant duties to provide documentation and information. The Supplier shall carry out appropriate inspections and provide proof upon request that the inspections have been carried out, along with the findings. He shall inform us immediately upon gaining suspicion that the subcontractor or staffing agency is not paying the minimum wage or not on the due date.

d. Termination without notice

We are authorised to terminate the contract extraordinarily without notice period if it should turn out that the Supplier does not pay its workers the legal minimum wage or not by the statutory due date.

The same rule applies if it should turn out that the Supplier is deploying a subcontractor who does not pay his workers the legal minimum wage or not on time, or the Supplier deploys workers from a staffing agency that does not pay its workers the legal minimum wage, or does not pay them by the due date.

Furthermore, we are authorised to terminate the contract extraordinarily if the Supplier, his subcontractor or staffing agencies hired by the Supplier are found to be in breach of other obligations arising from the Minimum Wage Act or the other obligations assumed by this agreement.

In all the above-mentioned cases, extraordinary termination without prior warning is permissible.

The option of exercising extraordinary termination for reasons other than those stated above shall remain unaffected.

e. Contract Penalty

In case the Supplier or a subcontractor engaged by the Supplier or an agency providing temporary workers hired by the Supplier does not pay the statutory minimum wage to its workers or does not pay in time and these workers are authorised to enforce minimum wage claims against the Purchaser, then Supplier is required to pay us a contract penalty in the amount of EUR 500.00 for each case of violation.

Breach of contract is defined as any deployment of such a worker who does not receive the statutory minimum wage or does not receive it on time. The contract penalty has to be paid for each individual worker deployed for each commenced month in which the worker is deployed.

Any assertion of further claims for damages shall remain unaffected by this.

f. Indemnification

Should the Supplier's workers assert claims against us for minimum wage according to § 13 Minimum-Wage Act (MiLoG) or § 14 Law for Posting Workers (AEntG), the Supplier shall indemnify us from these claims and, what's more, assume any costs related to this action.

The same applies if claims are asserted against us based on the Minimum Wage Act from workers from a subcontractor engaged by the Supplier as well as other subcontractors. Also in this case, the Supplier shall indemnify the Purchaser from any claims asserted and assume any costs related to this matter.

The same also applies to minimum-wage claims asserted against us by temporary workers deployed by the Supplier or his subcontractors. Also in this case, the Supplier shall indemnify us from the minimum-wage claims and any costs associated with asserting claims.

## XV. Termination

We are authorised to terminate the contract by written declaration towards the Supplier if, after conclusion of contract, circumstances arise outside our area of responsibility which were not apparent to us at the time the contract was concluded and which lead to our no longer having any use for the goods or services ordered from the Supplier. In case of such termination, the Supplier shall receive proportionate remuneration against proof of deliveries/services rendered.

## XVI. Nondisclosure

The Supplier shall be obliged to keep confidential any non-public commercial and technical information and documents concerning us (this also includes the conditions of the contract, our Purchase Orders, as well as all information made available to the Supplier for contractual purposes, to the extent they are not public knowledge) to which he becomes privy, based on the


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business relationship with us, and to solely use that information for performance of the ordered deliveries and services. Any sub-suppliers of the Supplier shall be committed to the same non-disclosure requirements.

The Supplier is only allowed to name our company or brands or our customers or end users when citing references or in publications if we have provided our prior express permission in writing.

**XVII. Industrial Property Rights and Copyrights**

The Supplier shall be liable for ensuring that no any industrial property rights of a third party, either within or outside Germany, are violated as a result of his delivery or service. He is required upon initial request to indemnify us from potential claims of third parties brought against us in association with possible violation of third-party industrial property rights as a consequence of his delivery or service and to reimburse us for all necessary expenditures incurred by us in association with such a legal action.

**XVIII. Spare Parts und Readiness for Dispatch**

The Supplier shall ensure that spare parts can be delivered for the period of the normal technical use, at least, however, at reasonable conditions for 10 years after delivery of the last delivery item.

Should the Supplier cease the delivery of spare parts or delivery of the delivery item after the expiration of the above-mentioned time period, we shall be given the opportunity to place a last order. In any case, the Supplier shall inform us at least 6 months in advance of the planned delivery stop.

**XIX. Court of Jurisdiction and Applicable Law**

The exclusive court of jurisdiction for all disputes arising from or in association with the contractual relationship between us and the Supplier is Trier. Mandatory statutory provisions on exclusive jurisdictions shall remain unaffected. In addition, we are also entitled to seek remedy from the court of jurisdiction in the place of fulfilment.

The legal relationships between us and the Supplier shall be governed by the laws of the Federal Republic of Germany, which apply to legal relations between domestic contractors with each other. The Convention for the International Sale of Goods (CISG) shall not apply.


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