

CustomCells Gruppe  
Customcells Holding GmbH  
Customcells Innovation GmbH  
Customcells Itzehoe GmbH  
Customcells Tübingen GmbH

### § 1 Scope of application

All deliveries, services and offers of our suppliers shall be made exclusively on the basis of these General Terms and Conditions of Purchase (hereinafter also referred to as "GTCP"). These are an integral part of all contracts that we conclude with our suppliers for the deliveries or services offered. They also apply to all future deliveries, services or offers to us, even if they are not separately agreed again.

Terms and conditions of our suppliers or third parties do not apply, even if we do not separately object to their scope of application in individual cases. Even if we refer to a letter which contains or refers to the terms and conditions of business of the supplier or a third party, this does not constitute acceptance of the scope of application of those terms and conditions of business. Consent by implied action is excluded.

Individual agreements made with the supplier in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCP. Subject to proof to the contrary, a written contract or our written confirmation shall determine the content of such agreements.

These terms and conditions only apply to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), legal entities under public law or special funds under public law within the meaning of § 310(1) BGB.

### § 2 Orders and contracts

Our order shall be deemed binding at the earliest on written submission or confirmation. Verbal confirmations, subsidiary agreements, extensions or other adjustments to the order shall not be deemed binding or explicitly excluded between the parties. The supplier must point out to us obvious errors (e.g. spelling mistakes and calculation errors) and omissions in the order including the order documents for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

We are entitled to change the time and place of delivery as well as the type of packaging at any time by written notification with a notice period of at least five working days (in the case of a working week from Monday to Friday) before the agreed delivery date. This also applies to changes in product specifications insofar as these can be implemented within the framework of the supplier's normal production process without significant additional effort, whereby the notification period in accordance with the previous clause is at least 10 working days. However, changes to the delivery or performance time and/or the place of delivery or performance are only permissible if they are reasonable for the supplier. We shall reimburse the supplier for any proven and reasonable additional costs incurred as a result of the change. If such changes result in delivery delays that cannot be avoided in the supplier's normal production and business operations with reasonable effort, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify us in writing of the additional costs or delays in delivery it expects on careful assessment in good time before the delivery date, but at least within 10 working days of receipt of our notification in accordance with p. 1.

We are entitled to withdraw from the contract at any time by written declaration stating the reason if we can no longer use the ordered products or services in our business operations or can only use them at considerable expense due to circumstances occurring after conclusion of the contract (such as lack of compliance with legal requirements, frustration of contract or if the financial circumstances of the supplier deteriorate after conclusion of the contract such that contractually compliant delivery or performance cannot be expected).

### § 3 Prices, terms of payment, invoice details

The price stated in the order is binding.

In the absence of a written agreement to the contrary, the price shall include delivery and transport to the shipping address stated in the contract, including packaging or – if the services are to be provided on site – the journey.

Insofar as the price does not include packaging as agreed and the remuneration for the packaging – not only provided on loan – is not expressly determined, this is to be charged at the proven cost price.

At our request, the supplier must take back the packaging at its own expense. If, by way of exception, a journey required for the performance of the service is not included in the price due to an express provision, concrete proof of the travel costs must be provided.

Unless otherwise agreed, we shall deduct a discount of 3% for payment within 30 days of delivery of the goods or provision of the service and receipt of the invoice, otherwise a net payment term of 60 days applies. Receipt of our transfer order at our bank is sufficient to ensure the timeliness of the payments owed by us.

All order confirmations, delivery documents and invoices must state our order number, the item number, delivery quantity and delivery address. If one or more of these details are missing and this causes a delay in processing by us in the normal course of business, the payment deadlines stated in paragraph 4 shall be extended by the period of the delay.

We do not owe any interest on maturity or arrears.

### § 4 Delivery time and delivery, transfer of ownership & transfer of risk

The delivery or performance time (delivery or performance date or period) specified by us in the order or otherwise applicable according to these GTCP is binding. Premature deliveries or services without our prior written consent are not permitted.

Delivery shall be made by the supplier DDP property of the recipient of the goods in accordance with Incoterms 2020. The time of proper transfer of ownership shall be deemed to be the time of the transfer of risk, unless otherwise stipulated in these GTCP or the purchase order.

The supplier must inform us immediately in writing if circumstances arise or become apparent as a result of which the delivery or performance time cannot be met.

If the day on which the delivery or service is to take place at the latest can be determined on the basis of the contract, the supplier shall be in default on expiry of this day without the need for a reminder from us. Otherwise, our notice of default must be given in text form.

In the event of a delay in delivery or performance, we are entitled to the statutory claims without limitation in addition to the contractual rights set out herein or in our order, whereby we may only exercise a right of withdrawal or assert claims for damages in lieu of performance after the expiry of a reasonable grace period without a response.

On expiry of the delivery date and the occurrence of a delay pursuant to § 4(3) of these GTCP, the supplier shall forfeit 0.5% per commenced working week, however, no more than 5% of the contractual value of its remuneration. The contractual penalty cannot be offset against the damage caused by delay to be compensated by the supplier. We reserve the right of set-off against an opposing, similar claim of our supplier. Unconditional acceptance of a delayed delivery does not constitute a waiver of claims for compensation.

The supplier is not entitled to partial deliveries or services without our prior written consent.

Even if shipment has been agreed, the risk shall only pass to us when the goods are handed over to us at the agreed destination. In the case of work performance, acceptance shall be decisive. Acceptance must be formal; other forms of acceptance are excluded.

The statutory provisions shall apply if we default on acceptance with the proviso that we are not obliged to accept if the delivery or service is unusual or insufficient for the intended use (or at least for the use to be expected by the supplier). However, the supplier must also expressly offer us its performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. the provision of material). If we default on acceptance, the supplier may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 of BGB). If the contract concerns a non-representable item to be manufactured by the supplier (individual production), the supplier shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

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### § 5 Force majeure

If the supplier or we believe that the proper performance of the services/obligations to cooperate is hindered, the supplier or we must notify the other party in writing without delay. Notification need not be issued if the facts and their impeding effect are obvious. The mere existence of the alleged hindrance is not sufficient for this purpose. The parties are aware of the global situation in relation to the COVID-19 pandemic at the time of the order. However, the parties assume that the COVID-19 pandemic does not affect the exchange of services under these GTCP or the order at the time of the order. If future developments in connection with the COVID-19 pandemic affect or hinder the exchange of services, these cases shall be treated as instances of force majeure in accordance with the provisions of these GTCP if they have a concrete impact on the provision of services. In any case, in view of the COVID-19 pandemic situation existing at the time of the order, each party involved shall make reasonable efforts to fulfil its performance obligations under and in connection with the order, even in the event of a change in the situation in the future.

The dates for performance and the prices set shall be postponed/corrected appropriately if the hindrance in operation or the effect of force majeure directly justifies this. The same applies to hindrances or effects on subcontractors due to force majeure, in each case to the extent that and for as long as the party is actually or legally prevented from making substitute procurements.

In this case, the parties must immediately enter into discussions on what measures can be taken to minimise the effects of the hindrance or effects on the performance of the service and price stability.

As soon as the impeding circumstances cease to exist, the party shall resume the performance of the service without undue delay on written notice. Production interruptions of not only insignificant duration due to unavoidable events (force majeure, e.g. industrial action) shall entitle us to withdraw from orders. In the case of all impediments to acceptance beyond our control, the delivery and payment date shall be extended in accordance with the duration of the delay.

### § 6 Protection of ownership

We reserve the title or copyright to orders placed by us, contracts as well as drawings, illustrations, calculations, descriptions and other documents made available to the supplier. The supplier may not make them available to third parties without our express consent, nor may it use them itself or have them used by third parties for other purposes or reproduce them. It shall return these documents to us in full at our request if they are no longer required by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract or an order. In this case, copies made by the supplier must be destroyed; the only exceptions to this are storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of normal data backup.

Tools and models which we make available to the supplier or which are manufactured for contractual purposes and which are charged to us separately by the supplier shall remain our property or pass into our ownership. The supplier shall identify them as our property, store them carefully, protect them against damage of any kind to an appropriate extent and use them only for the purposes of the contract. In the absence of an agreement to the contrary, the contracting parties shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in the items manufactured by the supplier or to improper use on the part of the supplier, its employees or other vicarious agents, they shall be borne solely by the supplier. The supplier shall notify us immediately of any damage to these tools and models that is not merely insignificant. On request, it must return them to us in proper condition if it no longer requires them for the performance of the contracts concluded with us.

Transfer of ownership of the goods to us shall be unconditional and without regard to payment of the price. If, however, in individual cases we accept an offer of transfer of ownership from the supplier conditional on payment of the purchase price, the supplier's retention of title shall expire at the latest on payment of the purchase price for the goods delivered. We shall remain authorised to resell the goods in the ordinary course of business even before

payment of the purchase price with advance assignment of the resultant claim (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular extended retention of title, passed-on retention of title and retention of title extended to further processing.

### § 7 Warranty claims

In the event of defects, we are entitled to the statutory claims without limitation. By way of derogation from this, however, the warranty period shall be 36 months, unless a longer period applies by law.

The statutory provisions (§§ 377 and 381 of the German Commercial Code (HGB)) apply to the commercial duty to examine and give notice of defects with the following proviso: our duty to examine shall be limited to defects which become apparent during our incoming goods inspection under external appraisal including the delivery papers (e.g. transport damage, wrong delivery and underdelivery) or which are recognisable during our quality control in the random sampling procedure. Insofar as acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to inspect, our complaint (notice of defects) shall be deemed to have been made without delay and in good time if it is sent within five working days of discovery or, in the case of obvious defects, of delivery.

We shall not waive warranty claims by accepting or approving samples or specimens submitted.

On receipt of our written notice of defects by the supplier, the limitation period for warranty claims shall be suspended until the supplier declares the defect(s) eliminated or otherwise refuses to continue negotiations on our claims. In the event of replacement delivery and rectification of defects, the warranty period for replaced and rectified parts shall begin anew unless we had to assume from the supplier's conduct that the supplier did not consider itself obliged to undertake the measure but only undertook the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.

Subsequent performance shall also include the removal of a defective delivered good and re-installation, provided that the good has been installed in another item or attached to another item in accordance with its type and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by the supplier even if it transpires that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognised or were grossly negligent in not recognizing that there was no defect.

### § 8 Liability

In the event of damage, the supplier shall be liable without limitation both for the damage to the item itself and for the consequential damage caused by a defect, unless it can prove that it is not responsible for the damage.

Furthermore, the supplier shall be responsible for all claims asserted by third parties for personal injury or damage to property which are attributable to a defective product supplied by it and must release us from the resultant liability. If we are obliged to carry out a product recall vis-à-vis third parties due to a defect in a product supplied by the supplier, the supplier shall bear all costs associated with the product recall.

The supplier is obliged to maintain product liability insurance at its own expense with cover of at least EUR 500,000, which, unless otherwise agreed in individual cases, need not cover the recall risk or punitive or similar damages. The supplier shall send us a copy of the liability policy at any time on request.

### § 9 Hazardous substances REACH/RoHs

If the scope of delivery/service contains hazardous substances, the supplier shall hand over to us, together with the order confirmation,

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the completed safety data sheets (SDS) in accordance with Article 31 in conjunction with Annex II of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

Insofar as the safety data sheets are not required by law, the supplier undertakes to provide information in accordance with Article 32 of the above regulation.

As soon as it becomes aware of it, the supplier must inform us that its scope of delivery/service contains substances listed in Regulation (EC) No. 1907/2006 (REACH) – Annex XIV, Annex XVII or in the candidate list of substances of very high concern (SVHC).

### § 10 Value engineering

If the supplier manufactures products/preliminary products according to our manufacturing documents/specifications/concepts or process steps, the following shall apply:

The supplier undertakes to cooperate with us at reasonable intervals in value engineering for parts/assemblies/products specified by us. The aim of such engineering is to reduce the price.

The supplier shall inform us in writing within a reasonable period of time in advance of the type and scope of a technological change and/or process improvement so that we can decide whether a renewed initial sample inspection is to be carried out. In this respect, we are also entitled to inspect the corresponding documents/documentation of the supplier and to inspect the changes or improvements at the supplier's premises.

If a new initial sample test is to be carried out, the supplier may only start production after we have approved the new samples in writing.

### § 11 Industrial property rights

In accordance with paragraph 2, the supplier guarantees that the products supplied by it do not infringe any industrial property rights of third parties in countries of the European Union or other countries where it manufactures the products or has them manufactured.

The supplier must release us from all claims made by third parties against us due to an infringement of industrial property rights for which it is responsible and reimburse us for all necessary expenses in connection with this claim. This shall not apply insofar as the supplier can prove that it is neither responsible for the infringement of industrial property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.

Our further legal claims due to defects of title concerning the products delivered to us remain unaffected.

### § 12 Spare parts

The supplier is obliged to keep spare parts for the products delivered to us in stock for a period of at least 10 years after delivery.

If the supplier intends to discontinue the production of spare parts for the products delivered to us, it shall notify us without undue delay after the decision on the discontinuation. This decision must – subject to paragraph 1 – be made at least 12 months prior to the discontinuation of production.

### § 13 Secrecy

The supplier is obliged to keep the terms and conditions of the order as well as all information and documents made available to it for this purpose (with the exception of information which is publicly accessible prior to disclosure) secret and to use them only for the execution of the order. It shall return them to us immediately on request after completion of enquiries or after processing of orders. In the even of a return, the supplier guarantees that the handover of the confidential documents shall be complete and that no copies have been retained.

Without our prior written consent, the supplier may not refer to the business relationship in advertising material, brochures etc. and may not exhibit delivery items manufactured for us.

The supplier shall bind its sub-suppliers by this § 13.

A right of retention with regard to confidential documents, irrespective of the legal grounds, is explicitly excluded.

### § 14 Subcontractors

Without our prior written consent, the supplier is not entitled to transfer the performance of the contract in whole or in part to a third party. If the supplier has our written consent, it shall remain jointly and severally liable for the performance of the contract. At our request, the supplier must replace the third parties used by it or to no longer use them.

### § 15 Assignment

The supplier may not assign to third parties its claims arising from the contractual relationship. This shall not apply in the case of undisputed monetary claims.

### § 16 Termination, withdrawal

Our right to terminate the contract in whole or in part is undisputed. In the event of termination, however, we must pay for all deliveries/services rendered up to that point and provide reimbursement for procured material and work delivered/performed appropriately within the scope of the transfer of ownership to us; in addition, § 648(2)(2) of BGB shall apply in this case. Further claims of the supplier are excluded.

Furthermore, we have the right to terminate the contract with immediate effect for good cause, in particular if a significant deterioration in the financial circumstances of the supplier occurs or threatens to occur and the fulfilment of obligations towards us is accompanied by this or could be expected to occur. In this case, the client has the right to acquire materials and/or semi-finished products, including any special operating resources, under reasonable conditions.

### § 17 Compliance with laws

In connection with the contractual relationship, the supplier must comply with the relevant statutory provisions applicable to it. This concerns in particular anti-corruption and money laundering laws as well as anti-trust, labour and environmental protection regulations.

The supplier shall ensure that the products delivered by it comply with all relevant requirements for placing products on the market in the European Union and the European Economic Area. On request, the supplier shall provide us with evidence of conformity by submitting suitable documents.

The supplier shall make the necessary efforts to ensure that its sub-suppliers comply with the obligations incumbent on the supplier under this § 17. In the event of non-compliance, the supplier shall be fully liable to us.

The supplier warrants that at the time of the conclusion of the contract it is not aware of any preliminary proceedings (in particular criminal, social or tax offences) against it or an affiliated company (within the meaning of §§ 15 et seq. of the German Stock Corporation Act (AktG)). If the contractor becomes aware of such proceedings after the entry into force of this contract, it shall inform the client without delay.

A breach of any of the above obligations shall entitle us to terminate or withdraw from current orders without notice for good cause. In the event of such termination, the contractor shall not be entitled to any compensation or damages. Furthermore, we expressly reserve the right to assert claims for damages.

If an investigation is announced pursuant to § 17 (4) of these GTCP, we remotely reserve the right to terminate the contract should we incur or be likely to incur damage as a result. In this case, § 16 of these GTCP shall apply accordingly.

### § 18 Quality and environmental management

The supplier shall establish and maintain a documented quality management system of a suitable type and scope and in accordance with the state of the art, for example in accordance with DIN EN ISO 9001:2015. In particular, the supplier shall keep records of its quality inspections and make them available to us on request.

The supplier hereby agrees to allow audits by us or a qualified third party commissioned by us for the purpose of assessing the effectiveness of its quality management system within the scope customary for this purpose. If significant deficiencies in the

implementation of the quality management system are identified in this context, the supplier shall bear the costs of the audit.

The supplier undertakes to ensure the energy efficiency of its products and its production process, to avoid unnecessary energy waste and to follow the current state of the art as far as possible. It shall operate an environmental management system based on DIN EN ISO 14001:2015.

### **§ 19 Place of performance, place of jurisdiction, applicable law**

The place of performance for both parties and the exclusive place of jurisdiction for all disputes arising from the contractual relationship is Itzehoe.

The contracts concluded between us and the supplier shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### **§ 20 Export law**

The supplier undertakes to inform us of all relevant export conditions, restrictions and regulations relating to its deliveries and services, in particular those of the USA, Germany and the EU.

If, in the course of the movement of goods and the use of its deliveries and services, confirmations, approvals or inspections by competent authorities become necessary (export licences, import licences or similar), the supplier confirms to us that it shall support these approvals in full and at its own expense or if it is responsible for them, that it shall carry them out at its own expense.

If delays occur with regard to binding delivery dates agreed to due to actions for which the supplier is responsible or the supplier's failure to act with regard to this § 20, the supplier shall be fully responsible for these and the resulting consequences and shall be liable without limitation for any resulting damage. In this sense, § 4(5) and § 8 shall apply mutatis mutandis.

### **§ 21 Final provisions**

Amendments or supplements to the contracts within this business relationship must be made in writing to be effective. This also applies to the cancellation of this clause.

Should individual provisions of these terms and conditions be invalid or incomplete, this shall not affect the validity of the remaining provisions or of the contract concluded with the client. We and the client undertake to replace any ineffective contractual provisions with agreements whose content, according to their economic purpose, comes as close as possible to the purpose of the ineffective clause. The same applies to any loopholes.