

## General Terms and Conditions for Sales from COTESA GmbH

### § 1 Miscellaneous, Scope of Application

- (1) The general terms and conditions for sales (hereinafter referred to as GTCS) are valid for all business relations between COTESA GmbH (hereinafter referred to as "COTESA") and all contractual partners from which their products, machines and/or services of every kind will be obtained (hereinafter referred to as "vendor"). The GTCS are especially valid in the case of contracts regarding the purchase or the procurement of tangible goods regardless of whether the vendor manufactures said goods themselves or procures said goods from a third party and independent of whether the contractual items are in conjunction with other tangible goods or with properties.
- (2) The GTCS from COTESA are exclusively valid. COTESA does not recognize conflicting or divergent terms and conditions from the vendor in regard to the GTCS from COTESA, unless and if necessary, insofar as COTESA explicitly agrees to said terms and conditions from the vendor in writing.
- (3) The GTCS are also valid if COTESA unconditionally accepts and/or makes payment for a delivery or service with knowledge of said conflicting or divergent terms and conditions from the vendor.
- (4) Once the GTCS are initially adhered to by a vendor, the GTCS are valid for all subsequent orders.
- (5) In the scope of individual orders, COTESA and the vendor may reach diverging agreements which take priority over the GTCS from COTESA. For said agreements to be legally valid, a written contract with COTESA must be concluded or a written confirmation from COTESA with the said deviating agreements must be received in order to confirm the contents of said agreements.
- (6) Any references to the validation of statutory regulations shall be used for clarification purposes only. Therefore, the statutory provisions shall apply even without such clarification, unless they were expressly excluded or amended in the GTCS.

### § 2 Confidentiality

- (1) In absence of a nondisclosure agreement, the following articles are valid:
- (2) The vendor must in all cases maintain confidentiality regarding the closure of agreements with COTESA including all contents thereof and duration of said agreements as well as all information and knowledge about orders of products and services from COTESA, data, images, patterns and models, designs, calculations and any and all similar business documents (hereinafter referred to as "information"), and the vendor is not allowed to duplicate said information or provide said information to a third party in any manner for any means. Subcontractors must be required to maintain confidentiality from the vendor.
- (3) All information, which is given to the vendor described in the above-mentioned article 2 regardless of in which form, remains the property of COTESA. All rights are expressly reserved by COTESA. Written paper documents and any other physical forms of information are to be returned to COTESA after conclusion of the contract without being requested by COTESA.

- (4) Delivered goods, which have been produced according to COTESA documents (designs/models) or according to confidential data from COTESA, are not allowed to be used by the vendor, or to be offered or delivered to any third party. This is also valid for corresponding printing orders from COTESA.
- (5) The usage of granted orders for advertising and promotional purposes is not allowed. The usage of a depiction of the course of business between the vendor and COTESA in reports and announcements is also forbidden.
- (6) In case of a breach of confidentiality, the vendor is liable to COTESA to the full extent of the statutory regulations.
- (7) The obligation according to the above-mentioned article 1 is not valid for said information, which the vendor has verifiably received from COTESA without the breach of rights before the point in time of notification by COTESA.

### **§ 3 Orders, Conclusion of Contracts**

- (1) All orders are only valid in writing in accordance to paragraph 126 of the German Civil Code (§ 126 b BGB) (hereinafter referred to as “in writing”).
- (2) The vendor is obliged to accept any order by COTESA within ten (10) calendar days (hereinafter referred to as “order acceptance”), otherwise COTESA is not obliged to honor said order(s) after this point.
- (3) The contract (hereinafter referred to as “contract”) will only become legally valid upon receipt of the written order confirmation by the vendor.
- (4) The vendor is not allowed to pass on an order either completely or partially to a third party without the previously obtained express written consent of COTESA.
- (5) Delivery schedules of existing contractual relations will be binding upon order request, unless the vendor objects to the request with good reason within the above-mentioned time frame according to article 2 above.

### **§ 4 Provisions of applicable Deliveries and Services – Content of Delivery**

- (1) The deliveries of goods and/or the performance of services and work (hereinafter referred to as “deliveries and services”) to be executed by the vendor will be conclusively listed in the individual order documents including possible attachments.
- (2) In the manufacturing and delivery of machines and systems, the provisions of the contents of the contract, especially regarding the technical specifications, are essential. The vendor is obliged to and guarantees the successful encompassment of the technical specifications as outlined here and in said documents according to their own promise of guarantee. For this purpose, the vendor must furnish all necessary planning, design, integration and adjustment services
- (3) COTESA reserves the right to unilaterally change the technical specifications, to supplement said specifications and to require additional services, which are necessary for the successful technical completion of services, even after the conclusion of a contract. In case of requested changes, supplements and additional services following the conclusion of a contract, both contractual partners are allowed to stipulate the accommodation of the price, which will be calculated according to the subsequent increase or decrease of actual costs.
- (4) It is the responsibility of the vendor to provide for the requirements for the complete and punctual delivery and/or service. This is also especially valid regarding approvals and authorizations from government authorities including the accompanying documentation and technical acceptance.

- (5) The vendor is responsible to deliver all necessary documents and licenses regarding import and export (country of origin, HS-code/customs tariff number) in compliance with valid EAR/ITAR regulations as well as to inform COTESA in the event of export restrictions.
- (6) Partial deliveries are only allowed with the explicit consent of COTESA.
- (7) Provided there is no other agreement, deliveries are to occur delivery duty paid including packaging, insurance and freight (DDP according to Incoterms 2010) to the respective place of delivery. The place of delivery is individually listed in the orders. The place of delivery is also the place of performance in the legal sense. The vendor bears the risk of physical and material damage up to the acceptance of the delivered item(s) by COTESA. The vendor is required to unload the delivered item(s) at the determined place of delivery.
- (8) When ordering hazardous goods, the appropriate DIN material safety data sheets are to be included upon order confirmation or at the very latest upon delivery.
- (9) The vendor is obligated to take back all packaging free of cost according to the packaging laws upon request of COTESA. If the vendor requires return of packaging, the vendor shall bear said costs as well. The vendor must provide a written notice of request for the return of packaging upon delivery at the latest. Deviations from legal rules and regulations regarding packaging are only allowed with prior written consent of COTESA.
- (10) The order number shall be clearly indicated on all letters of correspondence, delivery notices, bills of lading, waybills, package addresses, invoices, etc.
- (11) Upon delivery of the goods at goods receiving of COTESA, the delivery must contain a bill of lading, and insofar as required by the order, the necessary certificates.
- (12) When the delivery and installation of machines and systems occurs, the delivery is only considered successfully completed in the sense of technical specifications (paragraph 4, article 2) after the complete installation and implementation of the legal acceptance has occurred.

## **§ 5 Prices, Terms of Payment, Invoices**

- (1) The price, which is indicated in the purchase order, is binding.
- (2) The invoices of the vendors must fulfill all legal requirements regarding the assertion of input tax credits.
- (3) The amounts and quantities established by COTESA are authoritative when determining payment of invoices.
- (4) For an invoice of the vendor to be in accordance with the regulations, payment terms shall be 14 calendar days with a 3 % discount off the respective gross invoice amount for early payments or 60 days for the entire net invoice amount. The payment terms begin upon receipt of the invoice and the complete delivery to COTESA (paragraph 433 of the German Civil Code [§ 433 BGB]) or rather upon receipt of an auditable invoice and acceptance of service(s) (paragraph 631 of the German Civil Code [§ 631 BGB]). The transfer of money by COTESA is decisive. COTESA does not owe any interest on arrears (paragraph 353 German Commercial Code [§ 353 HGB]).
- (5) Cost estimates will not be compensated.

## **§ 6 Refusal of Service and Right of Retention**

- (1) COTESA grants the right of refusal of service and the right of retention according to the law.
- (2) If the vendor exercises their right to an alleged refusal of service or right of retention, COTESA shall be entitled to avert the assertion of the right of retention by means of a

security deposit in the amount of the supposedly endangered value of the outstanding delivery or services. The vendor is to bear the cost(s) of the security deposit, unless the vendor can prove, that the use of a refusal of service or a right of retention was justifiable.

- (3) The security deposit will take the form of a surety bond according to the guidelines of paragraph 8 article 3 of these GTCS.

#### **§ 7 Assignment and Set off**

- (1) The assignment of a claim regardless of the extent thereof is only allowed with prior express written consent from COTESA, whereas this consent may not be refused without reasonable cause. Reasonable cause to refuse an assignment of a claim particularly exists, but not exclusively, when after assessing the individual claims, the interests of COTESA supersede the interests of the vendor in substantiating the intended claim of assignment. Without the required consent previously executed assignments of claims are null and void.
- (2) The vendor relinquishes all claims regarding delays and their warranty claims from its vendors (manufacturers or subcontractors) to COTESA. COTESA reserves the right to exercise these claims in its own name or without disclosure in the name of the vendor.
- (3) A set off with counterclaims from the vendor is only allowed if these counterclaims are not disputed by COTESA or have been judicially established.

#### **§ 8 Security Provision**

- (1) COTESA is entitled to require a contract performance guarantee to the amount of ten (10) percent the of the gross contract value from the vendor. The contract performance guarantee extends to the fulfillment of all obligations of the vendor from the concluded contract, especially regarding the contractually agreed upon delivery and performance of services including calculation, defective product liability claims and damage compensation as well as the reimbursement of overpayments including interest. Contract performance guarantees will be returned when the vendor has fulfilled the contractually stipulated performance and where appropriate when the acceptance has been executed and the agreed upon security provision for defective product liability claims have been released.
- (2) COTESA is entitled to require a security provision to the amount of five (5) percent of the gross contract value for the fulfillment of defective product liability claims. The security provision for defective product liability claims extends from the fulfillment of defective product liability claims including damage compensation to the reimbursement of overpayments including interest on said overpayments.
- (3) Insofar as security provisions are required and there are no additional clauses in the contract for these purposes, the vendor can furnish the security provision themselves via a transfer to one of the credit institutions located within the European Union, with said credit institution issuing a bank guarantee with the following contents:
  - The guarantor assumes the absolute guarantee or surety for the vendor according to German Law.
  - The defense of avoidance and set off, the benefit of excussion as well as the right of deposit will be waived. According to the law from paragraph 770 article 2 of the German Civil Code (§770 Abs. 2 BGB – Einrede der Aufrechterhaltung [Defense of Avoidance]) this is not valid insofar as the counterclaim from the vendor is undisputed or has been determined to be legally binding.
  - The bank guarantee is for an unlimited time period and expires upon return of the bank guarantee certificate to the vendor.
  - In the course of commercial business transaction, it is agreed that Chemnitz, Germany will be the authoritative judicial district. Certificates of bank guarantees and other security

provisions will be returned upon demand when the period of limitations have expired and the requirements due up to said point in time have been fulfilled.

- (4) If the vendor does not furnish the contractual security provisions, COTESA is entitled to retain an amount of five (5) percent of the gross contract value up to the expiration of the period of limitation for defective product liability claims.
- (5) If the vendor does not furnish the security provision upon request by COTESA after the expiration of a reasonable period of time, COTESA is entitled to terminate said contract.

#### **§ 9 Delivery Times, Delivery Delays and Contractual Penalties**

- (1) The agreed upon delivery times are binding. Punctual delivery for goods and services, which do not require assembly or installation, is dependent on the receipt at the place of acceptance either agreed upon or as indicated by COTESA; punctual delivery for goods and services, which require assembly or installation as well as contractual performances, is dependent on their respective acceptance.
- (2) In case of a delivery delay or a manufacturing delay, COTESA is entitled to charge a contractual penalty to the amount of 0.25 percent of the gross contract amount per completed calendar day; however, the potential contractual penalty according to this regulation may not exceed five (5) percent of the gross contract amount. Further legal or contractual claims (especially claims for compensation of damages because of breach of contract) remain unaffected. COTESA is entitled to impose the reservation of said contractual penalty up to final payment from the vendor. The vendor reserves the right to prove that COTESA has incurred either no damages or substantially fewer damages than reported.

#### **§ 10 Quality and Compliance**

- (1) The vendor is required to guarantee the compliance to the contractual specifications by means of a quality assurance system.
- (2) The vendor is required to maintain the quality assurance system to the most modern, state-of-the-art technology, and to manufacture all goods according to the contractual quality assurance agreement (QAA) and to perform outgoing quality control inspections before all deliveries.
- (3) The vendor grants COTESA the right of access to inspect manufacturing process during normal working hours. Furthermore, the vendor complies to quality audits by COTESA for the evaluation of its quality assurance system.
- (4) The vendor is obliged to only deliver products, which fulfill all requirements of the Regulation EC 1907/20016 (Reach Regulations) in its currently valid version as well as to comply with the statutory disclosure duties and registration requirements and to supply the relevant material safety data sheets before the initial delivery or regularly upon revisions without request from COTESA.
- (5) The vendor must ensure that no conflicting raw materials according to the Dodd Frank Act are used in the manufacturing of their products.
- (6) The vendor is obliged to observe all relevant laws of the respective applicable legal regulations and to not perpetrate or to neglect actions, neither passively nor actively, neither directly nor indirectly, which could especially lead to a punishable offence regarding granting an undue advantage, corruption, fraud, breach of trust, violation of competition laws or criminal insolvency offences. In case of infringement, COTESA is entitled to an immediate, justifiable termination of all current contracts with the vendor as well as an immediate discontinuation of all business relations with the vendor (see Code of Conduct).

## **§ 11 Incoming Goods Inspection, Complaint Notification Period, Delay of Acceptance**

- (1) COTESA will inspect all incoming goods according to legal regulations (paragraph 377 of the German Code of Commercial Law) subject to the following regulations:
- (2) Insofar as an acceptance is agreed upon, COTESA is not obligated to perform an immediate inspection.
- (3) COTESA will immediately render a complaint for defects of incoming goods, which are able to be observed by visual inspection, including inspection of delivery documents as well as through sampling procedures (e.g. transport damage, incorrect delivery or insufficient deliveries).
- (4) The complaint notification is considered immediate according to paragraph 377 of the German Code of Commercial Law if said complaint is filed within five (5) working days.
- (5) In case of a hidden defect, COTESA will file a complaint notification immediately upon discovery of said defect. In this instance the vendor must waive the objection to a late complaint notification according to paragraph 377 of the German Code of Commercial Law.
- (6) The occurrence of a late acceptance on the side of COTESA will be determined according to legal regulations. The vendor is also obliged then to offer their unequivocal service or performance if an exact time or an exact calendar time has been agreed upon by both parties for an action or cooperation on the part of the vendor. In the event that COTESA delays acceptance, the vendor can demand compensation for its additional expenditures according to the legal regulations (paragraph 304 of the German Civil Code). If the contract concerns manufactured, non-fungible goods (single piece production), the vendor shall only be entitled to additional rights of compensation, when COTESA is committed to cooperation and the failure of cooperation cannot be justified.

## **§ 12 Reservation of Proprietary Rights**

- (1) Insofar as COTESA provides the vendor with parts, materials, means of production, COTESA reserves all proprietary rights.
- (2) The vendor is obliged to conduct an annual inventory for all materials provided by COTESA. The vendor must bear all costs regarding the inventorial differences of the material provided by COTESA.
- (3) With the payment of ordered and properly delivered goods, the sole proprietorship of said goods is exclusively transferred to COTESA. COTESA does not recognize the reservation of proprietary rights of the vendor or other third parties. This is also valid for goods currently being assembled and for partially delivered parts or systems. In the case in which there is a mixture or a connection of property in said goods from COTESA with other objects, COTESA shall have co-ownership of such goods to a level of the proportion of the mix or connection of said goods. Should the process occur in such a manner that the product of the vendor is to be seen as the principle product, it will be agreed upon that the vendor will transfer its proportion of co-ownership to COTESA. The vendor will then handle such property of COTESA with customary care.
- (4) Insofar as the estimated value of the security interest from COTESA exceeds the value of the secured receivables by more than fifty (50) percent, the exceeding amount of the security interest will be made available for use. Said selection is incumbent on the decision by COTESA.

## **§ 13 Liability of Material Quality Defects and Title Defects (General Information)**

- (1) The vendor must guarantee, that the delivered goods and performed services comply with all valid legal and governmental regulations and that said goods and services do not violate the protection of commercial and intellectual property rights or other rights of a third party.

- (2) Such deliveries and services must comply with the currently valid, generally accepted rules and regulations of the technology as well as any other legal regulations, technical inspection guidelines and accident prevention rules and regulations at the time of acceptance or at the time of delivery. DIN standards and VDE guidelines must especially be observed.
- (3) Regardless of the type of contract, the vendor must assume an independent guarantee for the strictly liable compliance to technical specifications.

#### **§ 14 Liability of Material Quality Defects and Title Defects in Sales Contracts, Secondary Liability and other Obligations**

- (1) COTESA is entitled to all legal rights regarding the liability of material quality defects and title defects. The deviation from technical specifications provided by COTESA in the purchase order are especially regarded as material quality defects.
- (2) Should the defect be detected first upon processing or preparation or during commissioning, COTESA is also authorized to make a claim for damages regarding work which has unsuccessfully been carried out.
- (3) The vendor is obliged to take care that its deliveries and services comply with the requirements for work safety and the legal accident prevention regulations and especially that required protective safety devices are delivered with said deliveries and services, even if single pieces, which are required for the proper operation thereof, are not individually listed in the orders. Apart from that, the vendor is also obliged to carry out all deliveries and services according to the terms and conditions of the currently responsible trade association. The vendor is liable according to statutory regulations regarding any violations of these or other obligations.
- (4) The vendor must bear the cost and risk for the return of defective goods.

#### **§ 15 Liability of Material Quality Defects in Service Contracts and Labor Supply Contracts**

- (1) The vendor is liable to COTESA for defects in labor supply contract services to the full extent. Labor supply contract services also include orders for repair.
- (2) Paragraph 11 is valid in accordance to labor supply contracts regarding movable objects. Moreover, an acceptance of services must be undertaken, in which compliance to technical specifications will be confirmed (also see paragraph 4).
- (3) Before the execution of labor supply contract services on the premises of COTESA, the COTESA external company policies must be signed. The vendor and/or the people appointed by the vendor must comply with the valid regulations for work safety and environmental protection at COTESA. The same is also valid for the observation of technical regulations. Apart from that paragraph 14, articles 3 and 4 are correspondingly valid.

#### **§ 16 Manufacturer Liability**

- (1) If a claim is made against COTESA regarding a defect in goods delivered by the vendor because of manufacturer liability, product liability or because of any other element of liability, the vendor must exempt COTESA from any liability resulting from said defect, insofar as the vendor is responsible for the defect and the vendor is externally liable. The exemption must occur upon the initial request.
- (2) The vendor is also obliged to recompense any expenditures according to paragraphs 683 and 670 of the German Civil Code as well as paragraphs 830, 840, 426 of the German Civil Code, which arise in conjunction with product recall actions. Within the realm of reasonability and possibility, COTESA will immediately inform the vendor regarding the contents and extent of the product recall actions. Further legal claims remain unaffected.

- (3) For the security of such claims, the vendor must maintain an appropriate business liability insurance and product liability insurance with an adequate coverage, of which the vendor must make available upon request. Goods supplied by COTESA must also be adequately insured for damage and destruction.

#### **§ 17 Vendor Recourse**

- (1) In addition to claims for material defect liability, COTESA is entitled to the unrestricted legal recourse claims within the supply chain (vendor recourse according to paragraphs 478 and 479 of the German Civil Code). COTESA is especially entitled to exactly require the kind of rectification (reworking or a replacement delivery) from the vendor, which COTESA is also potentially due to a customer in a particular case. An exception there of only occurs if COTESA is previously granted an equivalent compensation for the recourse claim. The statutory right of choice (paragraph 439, article 1 of the German Civil Code) will not be restricted.
- (2) Before COTESA recognizes or fulfills a validly filed claim of material quality defect (including compensation replacement according to paragraph 478, article 3, paragraph 439, article 2 of the German Civil Code) from a customer, COTESA will inform the vendor and request a short statement of the facts of said claim in writing. If the vendor does not offer its statement within a reasonable period of time and does not proffer a mutually agreeable solution, thus the actual warranted recourse of material quality defect liability claim by COTESA is deemed as a fault by the vendor; in this case the vendor is obliged to provide contradictory evidence.
- (3) COTESA is also entitled to claims of vendor recourse if the goods are reprocessed before sale to a customer.

#### **§ 18 Patents and Trademarks**

- (1) The vendor is responsible that no third-party rights are violated in conjunction with the delivery or services of the vendor.
- (2) In case that COTESA receives a claim regarding said third-party rights violation, the vendor is obliged to exempt COTESA from said claims. The exemption must occur upon initial request. COTESA is not entitled to enter into any agreement (especially settlements) with any third party without the approval of the vendor.
- (3) This exemption obligation also pertains to all expenses, which arise for COTESA or in connection with a claim request from a third party.

#### **§ 19 Contract Termination/Withdrawal**

- (1) In the case of force majeure (natural catastrophes, fires, floods, wars, labor disputes, court orders and any other unavoidable circumstances), COTESA is entitled to either completely or partially withdraw from a contract and to procure said contractual goods from other sources, insofar as the restriction is not temporary.
- (2) In case of a repeated performance disruption or a delivery with serious quality and quantity deviations, COTESA is entitled to the unrestricted right of extraordinary contract termination.

#### **§ 20 Period of Limitation**

- (1) All reciprocal claims between the vendor and COTESA have a period of limitation according to statutory regulations, insofar as nothing further has been agreed upon.
- (2) Deviating from paragraph 438, article 3, number 1 and paragraph 634a, article 1, number 1 of the German Civil Code, the general period of limitation for claims of material quality defects is three (3) years from the date of delivery, insofar as the law does not stipulate for a



longer period of limitations. Insofar as an acceptance is agreed upon, the period of limitation begins with the date of acceptance. The three-year period of limitations is also valid for claims of title defects, paragraph 438, article 1, number 1 of the German Civil Code remains unaffected. Claims of title defects are not limited, as long as a third party can make said claim against COTESA.

- (3) The period of limitations of claims due to material quality defect liability from COTESA will be suspended upon a written notice is sent to the vendor. The period of limitations will resume again when the vendor has ended the reworking measures or replacement delivery measures and has declared such measures in writing (date of receipt of the place of destination) or that the vendor has rejected reworking measures or replacement delivery measures in writing.
- (4) The period of limitations for claims according to paragraph 18 of these GTCS is ten (10) years and begins upon delivery.
- (5) Insofar as COTESA is entitled to extracontractual damage claims due to a defect, the regular statutory period of limitations according to paragraphs 195 and 199 of the German Civil Code are valid, if the usage of a period of limitations of the right to purchase or the right to a contract of services in an individual case does not lead to a longer period of limitations.

## **§ 21 Miscellaneous Provisions**

- (1) If single or multiple provisions of these GTCS are or become null and void, the validity of the remaining provisions shall not be affected.
- (2) Alterations to individual contracts must be in writing and will only be valid upon the agreement and consent of COTESA.
- (3) These GTCS are available in German and English. In the event that there is a linguistic deviation between the two versions, the German version has priority.

## **§ 22 Place of legal Jurisdiction, applicable Law**

- (1) The place of legal jurisdiction is Chemnitz, Germany. COTESA is also entitled to file lawsuits in the registered location of the headquarters or the registered location of the vendor.
- (2) The laws of the Federal Republic of Germany are valid in conjunction with international civil laws. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.