



General Conditions of Purchase – Dual Lift GmbH (Rev. 08/2018)

1. Definitions

- 1.1. **Buyer** means Dual Lift GmbH, Edisonstraße 22, 27711 Osterholz-Scharmbeck, Germany.
- 1.2. **Supplier** means the entity so designated in the Purchase Order.
- 1.3. **Goods** means the entirety of the equipment and/or materials to be delivered by Supplier to Buyer including software and related documentation and packaging
- 1.4. **Services** means the entirety of the services to be performed by Supplier including any resulting documents, e.g. specifications, plans, drawings, etc.
- 1.5. **Purchase Order** means the separate purchase order submitted by Buyer to Supplier electronically under which Buyer purchases and Supplier sells the Goods and/or Services.
- 1.6. **Agreement** means the contractual agreement between Buyer and Supplier which consists of the Purchase Order, these General Conditions of Purchase and any documents specifically referenced in the Purchase Order or herein.
- 1.7. **Intellectual Property Rights** means patents, utility models, industrial design rights, copyrights, database rights, trade secrets, any protection offered by law to information and all registrations, applications, renewals, extensions, combinations, divisions, continuations or reissues of any of the foregoing or which otherwise arises or is enforceable under the laws of any jurisdiction.

2. Agreement

- 2.1. The Agreement between Buyer and Supplier shall solely be governed by the terms and conditions set forth in the Purchase Order and/or Service Provider Agreement supplemented by these General Terms and Conditions of Purchase.
- 2.2. Any alterations, amendments or additions to the Purchase Order, including but not limited to Supplier's general terms and conditions, shall only become a part of the Agreement if Buyer specifically accepts such in writing. The acceptance of deliveries or Services as well as payments does not constitute such acceptance.
- 2.3. Any provisions in other documents (such as but not limited to specifications, data sheets, technical documentation, advertising materials, order confirmation and/or shipping documents) regarding legal terms, liability, restriction of use, restriction of application and/or restriction of suitability, or any other provision that changes the provisions of these General Conditions of Purchase shall not be applicable.
- 2.4. Buyer may cancel a Purchase Order if Supplier has not confirmed acceptance of the Purchase Order in writing within two weeks of receipt.
- 2.5. All costs incurred by Supplier in preparing and submitting any proposal and or acceptance of Purchase Order shall be for the account of Supplier.

3. Delivery of Goods

- 3.1. Unless otherwise set forth in the Purchase Order, all Goods shall be delivered DAP Buyer's offices/works with the address at Edisonstraße 22, 27711 Osterholz-Scharmbeck, Germany (as per Incoterms 2010) with the Goods unloaded. Delivery shall be completed as per the applicable Incoterm, but this shall not constitute acceptance of the Goods. Transfer of risk shall pass from Supplier to Buyer in accordance with the applicable delivery term as per Incoterms 2010; transfer of title shall be upon delivery.
- 3.2. Supplier shall, concurrently with the delivery of the Goods, provide Buyer with copies of all required permits.
- 3.3. Each delivery of Goods shall include at least the following documents and/or information: a packing list, copies of the invoice to the Buyer and a delivery note which, in addition to a precise description of the contents of the delivery by reference to the articles, their type and quantities etc., shall specify the exact dates and numbers of the orders issued by Buyer and – if applicable – Buyer' serial or specification number, Buyer's Purchase Order number and the date of shipment.
- 3.4. Supplier shall not make any partial delivery or delivery before the agreed delivery date(s). Buyer reserves the right to refuse delivery of Goods and return same at Supplier's risk and expense if Supplier defaults in the manner and time of delivery or in the rate of shipment.
- 3.5. Supplier shall pack, mark and ship the Goods in accordance with sound commercial practices and Buyer's specifications in such manner as to prevent damage during transport and to facilitate efficient unloading, handling and storage, and all Goods shall be clearly marked as destined for Buyer.
- 3.6. Notwithstanding the provisions of the applicable Incoterms, Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle (before delivery as per the applicable Incoterm) or pack the Goods.
- 3.7. Supplier shall ensure that all significant information and circumstances in terms of its performance of its contractual obligations as well as the intended use of its deliveries are known to Supplier in good time.
- 3.8. Buyer shall be entitled to request from Supplier modifications in the design and construction of the Goods, so long as Supplier can be reasonably expected to meet such requests. Supplier shall implement such modifications within a reasonable period of time. Mutually agreeably Change Orders shall be concluded concerning the consequences of such modifications, in particular with regard to delivery dates, extra and reduced costs. Buyer will determine such consequences within its reasonable discretion if agreement regarding the matters outlined in the previous sentence cannot be reached within a reasonable period of time.

- 3.9. Supplier shall ensure that it will continue to be able, for a period of ten (10) years following the termination of the supply relationship and on reasonable terms and conditions, to deliver to Buyer the supplied articles or parts thereof as spare parts.
- 3.10. Supplier shall be entitled to assign any of its duties to subcontractors only with the prior written approval of Buyer.

4. Inspection, Testing, Rejection of Goods

- 4.1. Inspection, testing of or payment for the Goods shall not constitute acceptance nor release Supplier from any of its obligations, representations or warranties under the Agreement.
- 4.2. Buyer may, at any time, inspect the Goods or the manufacturing process for the Goods. If any inspection or test is made on the premises of Supplier, Supplier shall provide reasonable facilities and assistance to Buyer's inspectors.
- 4.3. Buyer shall immediately upon receipt at the named place of destination examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other obvious deficiencies.
- 4.4. Should the Buyer discover any deficiency in the course of these inspections or at any later stage, it shall inform the Supplier of such deficiency. Complaints may be raised within one month of delivery of a product or performance, and insofar as deficiencies are not discovered until commissioning, processing or first use, within one month of detection. In this regard the Buyer shall have no other duties to the Supplier other than the duties of inspection and notification above.
- 4.5. If, as a result of an inspection, any part of the Goods is found not to be in compliance with the Agreement, Buyer may reject the Goods and/or return the entire affected shipment or lot without further inspection or, at its option, complete inspection of the balance of the Goods or all items in the shipment or lot, reject and return any or all nonconforming items (or accept them at a reduced price) and charge Supplier the cost of such inspection.

In the event that Buyer rejects Goods, Supplier shall collect the Goods within two (2) weeks from rejection at its own expense. If Supplier does not collect the Goods within said two (2) week period, Buyer may have the Goods delivered to Supplier at Supplier's cost, or with the Supplier's prior consent dispose of the Goods at Supplier's cost, without prejudice to any other right or remedy Buyer may have under the Agreement or at law. Goods not accepted but already paid by Buyer shall be reimbursed by Supplier to Buyer and Buyer shall have no payment obligation for any Goods not accepted by Buyer.

5. Performance of Services

- 5.1. Supplier shall perform the Services and provide the related work products with due skill and care, using the proper materials and employing sufficiently qualified staff.
- 5.2. Supplier shall be fully liable for the acts and omissions of any and all third parties with which it has sub-contracted in connection with the Services.
- 5.3. Only written confirmation by Buyer shall constitute acceptance of the Services performed and work products provided.

6. Price; Payment Conditions; Invoices; Set-off

- 6.1. The price in the Purchase Order is binding and firm.
- 6.2. Unless otherwise agreed, payments shall be due and payable no later than 60 (sixty) days net. If payment is made within 14 (fourteen) days, the Buyer is entitled to a 2 % (two percent) discount. The period for payment shall commence as soon as any delivery of Goods or performance of Services is completed and a proper and correct invoice is received by Buyer.

- 6.3. If Supplier fails to fulfill any of its obligations under the Agreement, Buyer may suspend payment to Supplier upon notice to Supplier.

- 6.4. All invoices, packing slips, bills of lading, containers, tags and correspondence pertaining to this order must bear Buyer's order number and coding, if any, and all invoices must be accompanied by a bill of lading if shipment is made by common carrier.

- 6.5. Invoices shall conform to applicable tax regulations, include the Purchase Order number, customer's account number and Buyer reference, place of unloading, Supplier number, part number, number of Goods, price per piece of Goods, volume per delivery and be accompanied by a correct Bill of Lading.

- 6.6. A separate invoice must be rendered for each lot of Goods shipped or delivered to Buyer.

- 6.7. Supplier is not entitled to assign a claim against Buyer to a third party or to have such claim collected by a third party.

- 6.8. Supplier shall only have the right to set-off against any claims of Buyer or the right of retention, if and to the extent that Supplier's claims are undisputed or its counterclaims are final and non-appealable. Buyer shall have the right to set-off against claims of Supplier any claims of Buyer's affiliates.

7. Delay

- 7.1. For the purposes of establishing timely delivery, the relevant point in time is the date of receipt at the place of delivery according to the Agreement.

- 7.2. If any delay in delivery or performance or rectification is anticipated, Supplier shall immediately inform Buyer and seek its decision. If requested by Buyer, Supplier shall ship via air or expedited routing to avoid or minimize delay to the maximum extent possible and with any added cost to be borne by Supplier.

- 7.3. In the event of a delay in delivery or performance, for which Supplier cannot document that it is not responsible for, Buyer shall be entitled to a contractual penalty of 0.2% per calendar week up to a maximum contractual penalty of 5% of the total contract price.

- 7.4. Additional or other statutory rights are not affected hereby. In the case of the assertion of a claim for damages due to delays in delivery, any contractual penalties paid shall be credited against this.

- 7.5. In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, Services or rectification, penalties may still be claimed if the reservation of rights is made no later than the date of final payment.

8. Warranty

- 8.1. Supplier represents and warrants to Buyer that all Goods and/or Services:

- a. are suitable for the intended purpose and shall be new, merchantable, of good quality and free from any defect in design, materials, construction and workmanship;
- b. strictly comply with the specifications of the Agreement and all other requirements under the Agreement;
- c. are delivered with all required licenses and permits which shall remain valid and in place, and with the scope to properly cover the intended use. Furthermore, all such licenses shall include the right to transfer and the right to grant sublicenses;
- d. shall be free from any and all liens and encumbrances;
- e. have been designed, manufactured and delivered in compliance with all applicable laws (including labor laws), regulations, EC Directive 2001/95 on General Product Safety;
- f. are provided with and accompanied by all information and instructions necessary for proper and safe use; and
- g. will be accompanied by written and detailed specifications of the composition and characteristics, to enable Buyer to transport, store, process, use and dispose of such Goods and/or Services safely and in compliance with the applicable law.

- 8.2. These warranties are not exhaustive and shall not be deemed to exclude or reduce any warranties set by law. These warranties shall survive any delivery, inspection, acceptance or payment of the Goods.
- 8.3. Without prejudice to any other rights accruing under the Agreement or law, the warranties set forth in Article 8.1 will subsist for a period of thirty-six (36) months from the date of delivery, or such other period as agreed in the Purchase Order (the "Warranty Term"). Goods repaired or replaced within the Warranty Term are warranted for the remainder of the original Warranty Term of said Goods, or twelve (12) months following the delivery date of such repaired or replaced Goods, whichever is longer.
- 8.4. If any Goods and/or Services are defective or otherwise do not conform to the requirements of the Agreement, Buyer shall notify Supplier and may, without prejudice to any other right or remedy available to it under the Agreement or at law, at its sole discretion one or more of the following options:
- require rectification by Supplier;
 - require delivery of substitute Goods or Work Products;
 - declare the Agreement rescinded;
 - reduce the price in the same proportion as the value of the Goods or Services actually delivered, even if that results in a full refund of the price paid to Supplier, or
 - hold Supplier liable for damages.
- 8.5. Supplier shall bear all cost of repair, replacement and transportation of the nonconforming Goods, and shall reimburse Buyer in respect of all costs and expenses (including, without limitation, inspection, handling and storage costs) reasonably incurred by Buyer in connection therewith.
- 8.6. Risk in relation to the nonconforming Goods shall pass to Supplier upon the date of notification thereof.
- 8.7. If health or safety is endangered, or if there is a danger of unusually high damage or for the purpose of maintaining Buyer's ability to deliver to Buyer's customers Buyer shall be entitled, following notification of Supplier, to remedy the defects or have them remedied by a third party. Costs incurred as a result of remedial action taken in accordance with the preceding sentence shall be borne by Supplier.
- 8.8. If Supplier avails itself of a third party to carry out a performance, Supplier will be held responsible for this third party as for any other person employed in performing an obligation.
- 9. Intellectual Property**
- 9.1. With the delivery of the Goods and/or the performance of the Services, Supplier hereby grants to Buyer the royalty-free, non-exclusive, transferable, worldwide and perpetual rights a) to use the Goods and Services including related documentation, to integrate them into other products and to distribute them; b) to sublicense such rights to affiliates, to contracted third parties, to distributors and to Buyer's customers;
- 9.2. Supplier warrants that the Goods and Services do not and shall not, alone or in any combination, infringe or violate any third party's Intellectual Property Rights.
- 9.3. The purchase of the Goods and/or Services shall confer on Buyer an irrevocable, world-wide, royalty-free and fully paid up, non-exclusive and perpetual license under all Intellectual Property Rights owned or controlled, directly or indirectly, by Supplier to use, make, have made, build-in, have built-in, market, sell, lease, license, distribute and/or otherwise dispose of the Goods and/or Services.
- 9.4. Supplier shall indemnify and hold harmless Buyer, its Affiliates, agents and employees and any person selling or using any of Buyer's products in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys' fees) in connection with any third party claim that any of the Goods or Services alone or in any combination or their use infringes any third party's Intellectual Property Rights, or, if so directed by Buyer, shall defend any such claim at Supplier's own expense.
- 9.5. Buyer shall give Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. Supplier shall provide all assistance in connection with any such claim as Buyer may reasonably require.
- 9.6. If any Goods or Services alone or in any combination, supplied under the Agreement are alleged or held to constitute an infringement or if their use is or is threatened to be enjoined, Supplier shall, as directed by Buyer, but at its own expense: one or more of the following:
- procure for Buyer or customers the right to continue using the Goods or Services alone or in any combination;
 - replace or modify the Goods or Services alone or in any combination with a functional, non-infringing equivalent; and/or
 - hold Supplier liable for damages.
- 9.7. If Supplier is unable either to procure for Buyer the right to continue to use the Goods or Services alone or in any combination or to replace or modify the Goods or Services alone or in any combination in accordance with the above, Buyer may terminate the Agreement and upon such termination, Supplier shall reimburse to Buyer the price paid, without prejudice to Supplier's obligation to indemnify Buyer as set forth herein.
- 10. Indemnification**
- 10.1. Supplier shall indemnify and hold harmless Buyer, its affiliates, agents and employees and anyone selling or using any of Buyer' products, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the delivery of the Goods or performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Goods, Services or any other information furnished by Supplier to Buyer under the Agreement.
- 11. Confidentiality**
- 11.1. Supplier shall treat all information provided by or on behalf of Buyer or generated by Supplier for Buyer under the Agreement as confidential. All such information shall be used by Supplier only for the purposes of the Agreement. Supplier shall protect Buyer' information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of Buyer and Supplier shall, upon Buyer' demand, promptly return to Buyer all such information and shall not retain any copy thereof.
- 11.2. The existence and the contents of the Agreement shall be treated as confidential by Supplier.
- 11.3. Supplier shall not, without Buyer' prior written consent, publicly make any reference to Buyer, whether in press releases, advertisements, sales literature or otherwise.

11.4. Buyer shall be entitled to process and use the contact data of Supplier's employees or subcontractors deployed by Supplier for the fulfillment of the Agreement which become known to Buyer in connection with the business relationship, solely for the execution of the Agreement and in accordance with the applicable data protection laws.

12. Force Majeure

12.1. In the event that Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of Supplier) and Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure.

12.2. Buyer shall be entitled to terminate the Agreement with immediate effect by written notice to Supplier, immediately if the context of the non-performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) calendar days and, upon such notice, Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties contracted by Supplier, financial problems of Supplier, nor the inability of Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Goods or Services to be supplied.

13. Compliance with Laws

13.1. Supplier shall at all times comply with all laws, rules, regulations, and ordinances applicable to the Agreement, the manufacturing and supply of the Goods and the performance of the Services, and the performance of any obligations in connection with the Agreement, including, but not limited to, all fair labor, equal opportunity, and environmental compliance laws, rules, regulations, and ordinances. Supplier shall furnish to Buyer any information required to enable Buyer to comply with any applicable laws, rules, and regulations in its use of the Goods and Services.

13.2. Supplier shall indemnify Buyer from any and all claims, damages, costs, demands, fines, penalties and the like, brought against or incurred or suffered by Buyer arising out of or in connection with any breach of Article 13.1.

14. Export Controls Compliance

14.1. Supplier agrees and warrants that it will comply with all applicable international and national export control laws and regulations and it will not export or re-export, directly or indirectly, any information, goods, software and/or technology to any country for which the European Union or the United States of America or any other country, at the time of export or re-export, requires an export license or other governmental approval, without first obtaining such license or approval.

14.2. Supplier agrees to inform Buyer in writing whether or not the supplied information, goods, software and/or technology is US controlled and/or controlled under the export control laws of its own country, and if so, Supplier will inform Buyer about the extent of the restrictions.

14.3. Supplier shall obtain all international and national export licenses or similar permits required under all applicable export control laws and regulations and shall provide Buyer with all information required to enable Buyer and its customers to comply with such laws and regulations.

14.4. Supplier agrees to indemnify and hold Buyer harmless from any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorney's fees), which Buyer may incur due to Supplier's non-compliance with applicable laws, rules and regulations. Supplier agrees to notify Buyer promptly of Supplier's receipt of any such notice of a violation of any export control related law, rule or regulation, which may affect Buyer.

15. Termination

15.1. In addition to any rights provided by law to withdraw from or cancel a contract, Buyer may terminate the Agreement in whole or in part in case (a) Supplier is in delay with the delivery of Goods or performance of Services and such delay – despite a corresponding reminder by Buyer – persists for more than two (2) weeks after receipt of such reminder or in case (b) that adherence to the Agreement by Buyer cannot reasonably be expected from Buyer because of a reason attributable to Supplier and taking into consideration the circumstances of the case and both parties' interests. This might, in particular, apply in case of an actual or possible deterioration of Supplier's financial situation thus threatening the due fulfillment of Supplier's obligations under the Agreement.

15.2. Buyer shall further be entitled to terminate the Agreement in whole or in part in case Buyer has reason to believe that Supplier has breached any applicable law.

16. Applicable Law, Legal Venue

16.1. The legal relationship between the parties shall be governed solely by the laws of the Federal Republic of Germany, under the exclusion of the UN Convention on Contracts for the International Sale of Goods.

16.2. Supplier and Buyer each consent to the exclusive jurisdiction of the competent district court (Landgericht) in Verden, Germany.

16.3. Supplier hereby waives all defenses of lack of personal jurisdiction and forum non-convenience.

17. Miscellaneous

17.1. Supplier will maintain comprehensive or commercial general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by Buyer) with, unless otherwise agreed by Buyer, a minimum limit of five million Euro for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or Services or acts or omissions of Supplier under the Agreement. Such insurance policies will be written with appropriately licensed and financially responsible insurers. Supplier shall inform Buyer of any cancellation or reduction in coverage with a minimum of 30 days prior written notice. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to Buyer upon Buyer's request.

17.2. In the event that any provision(s) of these General Conditions of Purchase and/or of the Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar effect reflecting the original intent of the clause to the extent permissible under applicable law.

17.3. Any amendment to the Agreement must be made in writing.