

# General Conditions for Supplies of MANNER Sensortelemetrie GmbH for Customers with a Seat or registered Office outside of Germany

Status August 2013

## 1 General Conditions

- 1.1 The scope, quality and all terms and conditions of the supplies or services (hereinafter called "Supplies") shall be exclusively defined by written declarations of both parties and by written provisions of these conditions (hereinafter called "Contract"). General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by MANNER Sensortelemetrie GmbH (hereinafter called "Supplier"). The Contract shall be deemed to have been concluded upon receipt of Supplier's written acknowledgment stating its acceptance of the order.
- 1.2 For cost estimates, drawings and other documents (hereinafter called "Documents"), the Supplier reserves all rights, title and interest regarding all intellectual property rights including but not limited to copyright in the Documents. Such Documents may not be made available to third parties without the prior consent of the Supplier and they shall, upon request, be immediately returned to the Supplier if he is not awarded the contract. Sentences 1 and 2 shall apply vice versa to Purchaser's Documents; however, these may be made available by the Supplier to his sub-contractors and sub-suppliers.
- 1.3 If the Supplies also comprise any software products including any relating documentation, than as for these software products and documentation and unless otherwise agreed the Purchaser shall have only the non-exclusive right to use software in machine-readable object code form in connection with the Supplies as specified in the operation documentation, if any.
- 1.4 The Purchaser is only allowed to make two back-up copies of such software with use thereof solely to right set forth above.
- 1.5 The Purchaser may transfer its rights in the software only in connection with the sale or other transfer of the Supplies to a third party.
- 1.6 The Supplier shall be entitled to provide partial Supplies.
- 1.7 The Supplier shall not be obligated to fulfill this Contract if such fulfillment is prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 1.8 The Purchaser shall inform the Supplier about the standards and regulations applicable to the Supplies at the place of business of the Purchaser and/or the place of delivery.

## 2 Prices and Terms of Payment

- 2.1 Prices shall be ex works (Incoterms®2010) excluding packing and any taxes, duties or imposts payable under applicable law. Purchaser agrees to pay or reimburse Supplier for any such taxes, duties or imposts which Supplier or his subcontractors or sub-suppliers are required to pay.
- 2.2 If the Supplier has undertaken the assembly or erection, the Purchaser shall bear all required incidental costs in addition to the agreed Contract price unless otherwise agreed.
- 2.3 Payments shall be made free to the bank account or payment office notified by the Supplier.
- 2.4 The Purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.
- 2.5 Unless provided otherwise in writing between the parties, the invoices shall be due for payment immediately and shall be settled no later than on the 30th day counting from the date of invoice, without any cash discount or other deduction allowed. If the Purchaser is in default with respect to the agreed terms of payment, he shall be liable, without reminder, to pay default interest, from the 31st day counting from the date of the invoice. The default interests according to the offer are due.

## 3 Retention of Title

- 3.1 Title to the Supplies shall remain with Supplier until each and every claim against the Purchaser to which the Supplier is entitled under this business relationship has been duly satisfied. Upon entering into the Contract, the Purchaser authorizes the Supplier to enter or notify reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at Purchaser's costs.
- 3.2 For the duration of the retention of title, the Purchaser shall be prohibited from giving the Supplies in pledge or as security, and resale shall be permissible only in the ordinary course of business and subject to the condition that the Purchaser either receives payment from its customer or retains title so that the property is transferred to the Purchaser's customer only after fulfillment of his obligation to pay.
- 3.3 In case of seizure of the Supplies or similar acts or interventions by third parties which may result in the Supplier losing title to the Supplies, the Purchaser shall inform the Supplier immediately thereof in writing.
- 3.4 In cases of fundamental non-performance of contractual obligations by the Purchaser, especially a delay in payment, the Supplier shall be entitled to take back the Supplies. The Purchaser shall be obliged to return the Supplies. The taking back, the assertion of the retention of title or the seizure of the Supplies by the Supplier shall not mean termination of the Contract and restitution, unless expressly stated by the Supplier.

## 4 Time for Delivery and Delay

- 4.1 Performance of the stipulated time for delivery is subject to the timely receipt by the Supplier of all documents, necessary permits and releases, especially of plans and to processing of necessary components to be provided by the Purchaser, as well as fulfillment of the agreed terms of payment and other obligations by the Purchaser. To the extent that said conditions are not fulfilled on time, the time for delivery shall be extended accordingly and the Purchaser shall reimburse the Supplier all additional cost and expense incurred due to such extension, unless the Supplier is responsible for the extension.
- 4.2 If non-performance of the time for delivery is due to force majeure including impediments, accidents or disturbances, which could not be avoided despite application of due care the time for delivery shall be extended accordingly. Force majeure events shall include but are not limited to mobilization, war, civil insurrection, terrorism, acts of government, non-granting of required export permissions, epidemics, strike, lock-out, raw material shortages, lack of transportation, interruption of electricity and forces of nature.
- 4.3 Any further rights and remedies of the Purchaser than those as per this Section 4 based on a delay, in particular Purchaser's right to claim damages shall be excluded.
- 4.4 If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch by the Supplier, the Purchaser may be charged storage costs for each month thereafter up to the amount of 0.5 % of the Contract price of the Supplies but in no event shall the aggregate storage charges exceed a total of 10 % of the total Contract price.

## 5 Transfer of Risk

If the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over of Purchaser's own service or the trial run is delayed for reasons within the Purchaser's responsibility, or if the Purchaser has failed for other reasons to accept delivery, the risk of loss shall pass to the Purchaser on the date when it would have passed but for such failure of the Purchaser.

## 6 Assembly and Installation

Unless otherwise agreed in writing, assembly and installation shall be subject to the following provisions:

- 6.1 The Purchaser shall provide at his own expense and in a timely manner:
  - a) all earth-moving and construction work and other ancillary services not specific to the Supplier's trade as well as the necessary skilled and unskilled labor, materials and tools,
  - b) the equipment and materials necessary for assembly, installation and commissioning such as scaffolding, lifting equipment etc., fuels and lubricants,
  - c) energy and water at the point of use, including connections, heating and lighting,
  - d) suitable, dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the assembly personnel including appropriate sanitary facilities. Furthermore, the Purchaser shall take all measures he would take for the protection of his own property to safeguard the property of the Supplier and of the assembly personnel,
  - e) protective clothing and protective devices which are needed because of particular conditions on the site,
  - f) all accident prevention measures necessary to protect both the Supplier as well as Suppliers personnel.
- 6.2 Before the start of assembly or installation, the Purchaser shall make available at his own cost and expense all necessary information concerning the location of concealed electric power, gas and water lines or of similar installations as well as all required data concerning static and sub-surface conditions of the site.
- 6.3 Before the beginning of assembly or installation, the Purchaser shall provide all necessary materials and equipment to start work at the site and carry out all preparations to such a point that the assembly or installation can be started as agreed and carried out without interruption. Access roads and the site shall be paved and clear. The site shall be prepared for erection, assembly or installation of Supplies.
- 6.4 If the assembly, installation or commissioning is delayed by circumstances for which the Supplier is not responsible, the Purchaser shall bear the costs of waiting periods and of any additional travelling of the Supplier or the assembly personnel that may be necessary. In this case the Supplier shall be entitled to an equitable adjustment in schedule, price and other pertinent conditions of the Contract.
- 6.5 The Purchaser shall certify to the Supplier at weekly intervals the hours worked by the Supplier's assembly personnel and shall promptly confirm in writing the completion of assembly, erection or commissioning.

6.6 If, after completion, the Supplier requests acceptance of the Supplies, it shall be carried out by the Purchaser within two weeks of the Supplier's request, failing which the Supplies shall be deemed to be accepted. Acceptance is also deemed to have taken place if the Supplies are put to use by the Purchaser.

## 7 Taking delivery

7.1 The Purchaser shall be entitled to refuse acceptance of delivery only if Supplies are visibly and substantially defective, and the Purchaser provides the Supplier specific written notice thereof within three (3) days of delivery of such Supplies.

7.2 Upon taking delivery or receipt of shipping documents, the Purchaser shall check Supplies and shall notify the last carrier of:

- a) any damage caused to the Supplies by transport or of
- b) objections regarding forwarding or transport of the Supplies.  
The Purchaser is obliged to send a copy of the notification to the Supplier.

## 8 Defects Liability

The Supplier shall be liable to the Purchaser for defects including the non-compliance with express warranties or the failure of the Supplies to meet guarantees as follows:

8.1 The Supplier shall, upon written request of the Purchaser, at his option, repair any defect or replace any Supplies which turn out to be defective within the defects liability period for any defect, which is due to circumstances that existed before the transfer of risk occurred. Insofar as defective parts have to be replaced, such defective parts shall pass into ownership of the Supplier.

8.2 The defects liability period shall be twelve (12) months from the date the transfer of risk to the Purchaser occurred or respectively completion of the respective Supply, in the event a Supply is assembled or erected by the Supplier under the Contract.

8.3 The Purchaser shall immediately inspect the Supplies and shall immediately notify the Supplier in writing of any defects. If the Purchaser does not notify the Supplier in writing, the Supplies are deemed to have been accepted with respect to such defects.

8.4 The Purchaser may withhold payments on account of defects only if the legitimacy of the asserted defects liability claim is established by the Purchaser beyond reasonable doubt.

8.5 The Supplier shall be given adequate time and opportunity to remedy the defect. For this purpose, the Purchaser shall grant the Supplier working access to the non-conforming Supplies including disassembly and reassembly without cost to the Supplier. Purchaser shall at his expense and upon request of Supplier send the defective parts to Supplier. Cost incurred in relation with the remedy of defects in works or repair centers of the Supplier shall be at Supplier's expense. If the remedy of defects is impossible to be carried out in works or repair centers of the Supplier, cost related to such remedy of defects shall be assumed by the Purchaser to the extent such cost exceed customary transport, personnel, travelling and accommodation expenses.

8.6 If an adequate extension granted to the Supplier expires without the defect being remedied, the Purchaser shall have the right to a reduction of the Contract price or, if the portion of the Supplies which is not defective is of no use for the Purchaser, to terminate the Contract and obtain restitution.

8.7 The Supplier shall not be liable for defects which only insignificantly impair the use of the respective Supply, unsubstantial deviations of the Supplies from the specification of the Supplies, natural wear and tear or damage, arising after the transfer of risk, from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, defective installation or erection not carried out by the Supplier, inappropriate foundation or particular external influences not explicitly assumed to impact on the Supplies under the Contract.

8.8 The Supplier shall not be liable if the Purchaser or a third party carries out modifications or repairs improperly.

8.9 Any further rights and remedies of the Purchaser than those as per this Section 8 based on a defect, in particular any right to terminate the Contract and obtain restitution or to claim damages, shall be excluded.

## 9 Industrial Property Rights and Copyright

Unless otherwise agreed upon in writing between the parties, the Supplier shall provide the Supplies solely where the Purchaser has its seat or registered office free from third parties' industrial property rights and copyrights (hereinafter called "Intellectual Property Rights").

9.1 In the event a third party, because of an infringement of Intellectual Property Rights by the Supplies asserts legitimate claims against the Purchaser, the Supplier shall be liable to the Purchaser as follows:

- a) Supplier shall at his own option and expense, either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Intellectual Property Rights or replace the relevant Supply. If this is not reasonably possible for the Supplier, the Purchaser shall be entitled to terminate the Contract whereupon the Supplier shall take back the relevant Supply and refund the Contract price for such Supply.
- b) Supplier's aforesaid obligations shall exist only provided the Purchaser has immediately notified the Supplier in writing of the claims asserted by the third party, the Purchaser has not acknowledged an infringement and all countermeasures and settlement negotiations are reserved to the Supplier. If the

Purchaser stops using the Supplies to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.

9.2 Claims of the Purchaser shall be excluded if he is responsible for an infringement of Intellectual Property Rights.

9.3 Claims of the Purchaser shall also be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Purchaser, by a use of the Supplies not foreseeable by the Supplier or by the Supplies being altered by the Purchaser or being used together with products not provided by the Supplier.

9.4 Further rights and remedies of the Purchaser than those as per this Section 9 based on an infringement of third parties' Intellectual Property Rights; in particular the Purchaser's right to claim damages, shall be excluded.

9.5 The Purchaser may use the plans and drawings provided by the Supplier only for the intended purpose. The Purchaser shall not be entitled to use these plans and drawings for other purposes, especially not for the reproduction of the Supplies or parts of the Supplies.

## 10 Impossibility of Performance / Adaptation of Contract

10.1 If it is impossible for the Supplier to carry out the Supplies for reasons for which he is responsible, the Purchaser shall be entitled to claim damages. The Purchaser's claim for damages shall be limited to 3 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. Except for the right to terminate the Contract for the future, the Purchaser shall have no additional rights, in particular neither right to rescind from the Contract nor to reduce the remuneration nor to claim further damages.

10.2 In case applicable law changes or other relevant laws or changes of engineering standards have a substantial impact on the content of Supplies or their performance or considerably affect Supplier's business or in case of unforeseeable events in the context of Clause 4.2, the Contract shall be adapted appropriately in order to account the changed circumstances, including but not limited to an increase of the total price agreed for the provision of the Supplies under this Contract as at the date of this Contract. Where this is not economically reasonable, the Supplier shall have the right to terminate the Contract. Notwithstanding any other provision in this Contract, the Supplier shall be entitled to terminate the Contract when a force majeure event has continued for more than 180 days. Any such termination shall be without liability to the Supplier.

10.3 If the Supplier wants to make use of this right of termination, he shall notify the Purchaser in writing immediately after becoming aware of the force majeure event. This notification requirement shall apply even where at first an extension of the time for delivery had been agreed between the Parties.

## 11 Further Liability

11.1 Any and all further rights and remedies of the Purchaser against the Supplier for whatsoever legal reason shall be excluded. In particular, the Purchaser shall not be entitled to challenge the Contract for material error, including any challenge of the Contract for any error related to defects of the Supplies. The Purchaser shall also not be entitled to claim damages; this shall refer in particular to claims for loss of production, loss of use, loss of orders or profit and other direct, indirect or consequential damage.

11.2 The aforesaid shall not apply if liability is mandatory, e.g. in accordance with the Product Liability Act, in cases of intent, gross negligence by directors and officers of the Supplier or in the case of willful hiding of a defect. Clause 11.2 shall also be applicable to Sections 4, 8, 9 and 10.

11.3 These limitations of liability shall also apply for the benefit of the Supplier's subcontractors, suppliers, agents, directors, officers and employees.

## 12 Transfer

12.1 Supplier may transfer the rights and obligations arising from the Contract to a third party. This transfer does not become effective if the Purchaser objects to aforesaid transfer within four (4) weeks of receipt of such notification. This shall be pointed out by Supplier in the notification.

12.2 As an exception, Supplier may transfer rights and obligations arising from this Contract to any subsidiary, parent or affiliate of the Supplier without prior written consent of the Purchaser.

## 13 Confidentiality

Any information made available to the Purchaser by the Supplier in connection with this Contract shall be treated as confidential. The Purchaser shall use the information only for the purposes specified in this Contract. This confidentiality obligation shall not apply to information which Purchaser can demonstrate,

- a) is already in the public domain or becomes available to the public through no breach by Purchaser of this confidentiality undertaking or
- b) was in Purchaser's possession prior to receipt from Supplier without a confidentiality undertaking or
- c) has thereafter been legally obtained without confidentiality obligation from others or

d) is independently developed by the Purchaser who had no access to the information received hereunder. The obligations set forth in this Section 13 shall survive any termination of the Contract.

**14 Dispute Settlement / Applicable Law**

14.1 Place of performance and exclusive place of jurisdiction for all legal disputes arising from contractual relationships with our customers is Spaichingen.

**15 Miscellaneous**

15.1 Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of this Contract on the basis of mutual trust and of the mutual interests of both parties.

15.2 In the event of legal invalidity of individual stipulations, the other parts of this Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of this Contract would constitute unacceptable hardship for either party.

