

**GENERAL CONDITIONS FOR PURCHASE OF SERVICES of VON ARDENNE GmbH,  
2013 edition**

**1. Scope**

- 1.1. These General Conditions for Purchase of Services apply to all Purchase Orders and service contracts entered into by VON ARDENNE GmbH (VON ARDENNE) and its contractors (Contractor). Differing, conflicting, or additional terms and conditions on the part of Contractor shall not be part of the contract unless VON ARDENNE agrees to them in writing.
- 1.2. Oral statements before or during conclusion of the contract shall be binding only if confirmed in writing.

**2. Ordering and Order Confirmation**

- 2.1. All purchase orders and any amendments or additions thereto shall be binding only if made in writing.
- 2.2. VON ARDENNE is entitled to revoke the purchase order at no cost if the Contractor fails to confirm it without modification within 10 days from receipt. The order confirmation must include the purchase order number and the order item.
- 2.3. VON ARDENNE may request reasonable changes in execution of the services. In such case, the consequences resulting therefrom – in particular with regard to additional or reduced costs and effects on the schedule shall be considered accordingly.

**3. Performance**

- 3.1. Contractor is obligated to inform himself before the performance of services on VON ARDENNE's or third parties' premises of all applicable safety and accident prevention regulations and to ensure that Contractor's employees comply with these rules. Breach of such regulations shall entitle VON ARDENNE to immediate termination of the Purchase Order.
- 3.2. Down payments shall be used by Contractor exclusively to perform the services described in the purchase order. If equipment or other items are provided by VON ARDENNE to perform such services, Contractor shall ensure proper storage and labeling as the property of VON ARDENNE. Contractor shall bear liability for any damage or loss.

**4. Prices**

- 4.1. In consideration of the performance of the services, the fixed prices or hourly rates agreed in the Purchase Order shall apply. Any and all services to be provided by Contractor under the Purchase Order as well as any rights granted to VON ARDENNE shall be compensated for with the prices stated in the Purchase Order.
- 4.2. If hourly rates are agreed, the total amount specified in the Purchase Order is considered to be a fixed cost ceiling. Contractor shall invoice such Services based on the agreed hourly rates at cost upon presentation of timesheets confirmed by VON ARDENNE.
- 4.3. Contractor shall notify VON ARDENNE without undue delay of any foreseeable overrun of the fixed cost ceiling. Payments exceeding the cost ceiling require VON ARDENNE's written consent before execution of the respective services.

**5. Deadlines, Delay**

- 5.1. Agreed milestones, deadlines, and dates are binding. Decisive for the compliance with agreed milestones, dates, and deadlines is the complete and duly execution of the contractual services at the place of fulfillment indicated in the Purchase Order.
- 5.2. If Contractor becomes aware that the agreed dates, for whatever reason, cannot be complied with, Contractor shall immediately notify VON ARDENNE of such delay, indicating its probable duration.
- 5.3. In case of delay VON ARDENNE is entitled to claim a contractual penalty in the amount of 0.5% of the order value per week or part thereof, but not exceeding 5% of the total order value. Contractor has the right to demonstrate to VON ARDENNE that no damages or significantly lesser damages were incurred as a result of the delay. The penalty for delay will then be reduced accordingly. Any further claims for damages remain unaffected, but the contractual penalty shall be deducted therefrom.

**6. Payments**

- 6.1. Payments shall be made as agreed in the Purchase Order. Performance of services before the agreed date shall have no effect to the related payment date. If milestones are agreed, the payment period shall not begin before achievement of the milestones.
- 6.2. If no agreement has been made for payment, payment is expected within 30 days of receipt of a verifiable invoice. The invoice must cite the purchase order number, order item, and the VON ARDENNE item number.
- 6.3. No assignment shall be made of claims made against VON ARDENNE by Contractor. The rights of both parties pursuant to § 354a HGB are not affected by this term.
- 6.4. VON ARDENNE shall be entitled to offset against any and all all claims it may have against Contractor, regardless of the legal reason. This provision shall also apply even if one party agrees to cash payment and the other party has agreed to payment in bill of exchange or other services. Contractor may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 6.5. The title to any goods to be delivered with the services (if any) shall pass to VON ARDENNE no later than upon payment in full.

**7. Third Party Intellectual Property Rights**

- 7.1. Contractor warrants that VON ARDENNE does not infringe any patents or intellectual proprietary rights, including applications for industrial property rights and/or other rights, by using or reselling of the services provided under the Purchase Order, and shall indemnify and hold harmless VON ARDENNE against all third party claims resulting from the use or infringement of such rights.
- 7.2. Contractor shall immediately inform VON ARDENNE of third party intellectual property rights which Contractor has become aware of and which may prevent VON ARDENNE or its customers from the agreed use of the goods and services provided.

**8. Claims under defect liability / product liability**

- 8.1. Contractor warrants that the services provided to VON ARDENNE are conform to the current state of the art, comply with the applicable standards and regulations, and will be provided professionally, in perfect quality, in accordance with the contractually agreed specifications, and are free from third party rights.
- 8.2. Contractor shall indemnify and hold harmless VON ARDENNE from any claims arising from producer's liability or under the Product Liability Act, as far as the damage was caused by a defect in contractual services. Contractor shall insofar bear all costs and expenses, including legal costs, unless the cause of the defect was outside of Contractor's sphere of responsibility.

**9. Termination and Suspension**

- 9.1. VON ARDENNE is entitled at any time to temporarily suspend the execution of or to terminate the Purchase Order by written notice.
- 9.2. After receipt of such written notice as to Section 9.1, Contractor is - until further instruction of VON ARDENNE - obliged to suspend work, to give no further orders to third parties, and to cancel orders already issued to third parties. The performance and materials already provided or currently in progress shall initially be secured by Contractor until further instruction from VON ARDENNE.
- 9.3. If VON ARDENNE terminates the Purchase Order for convenience, Contractor shall –excluding any further claims for whatever legal reason- be entitled to payment of the portion of the Purchase Order Price for such performances which are proven to be already executed at the date of receipt of the notice as to Section 9.1. Further, Contractor shall be entitled to compensation of cancellation costs proven by appropriate receipts.
- 9.4. Upon resumption of deliveries and services, Contractor may request – excluding any further claims - a reasonable postponement, and compensation of documented, reasonable suspension costs.

9.5. VON ARDENNE shall be entitled to terminate the Purchase Order if the insolvency proceedings are filed on the assets of Contractor or if Contractor suspends payments. Further legally provided termination or withdrawal rights shall be unaffected.

#### **10. Rights to Results**

10.1. Results shall mean any and all findings obtained, laid down or embodied as well as goods or other documents produced in the course of the execution of the Purchase Order. Contractor shall transfer any and all rights to the Results to VON ARDENNE.

10.2. Contractor shall grant VON ARDENNE- insofar as VON ARDENNE is not regarded as the author of the respective Results - a right to Results (regardless of whether or not such Results are protected by industrial property rights) which is exclusive, free of charge and without limitation in place, time and contents to use such Results in virtually any type of use. In the case of Results which are protected by copyright and in the case of software -also with regard to the documented source code- VON ARDENNE shall in particular be entitled to show, edit or in other way transform such Results and to offer, publish, distribute, reproduce them in the original, edited or transformed form also over data networks. Furthermore, VON ARDENNE shall be entitled to perform any acts under § 69c UrhG [German Copyright Act] and to grant unlimited rights of use. VON ARDENNE shall be entitled to transfer the rights of use granted to VON ARDENNE and to grant non-exclusive, sublicensable or exclusive rights of use.

10.3. Contractor undertakes to inform VON ARDENNE immediately in writing of all inventions or technical improvements which were created in fulfilling the Purchase Order (hereinafter referred to as „Inventions“), regardless of the fact whether or not such Invention is protectable. Contractor shall claim the Inventions and Invention shares of his employees without limitation and transfer them completely to VON ARDENNE. VON ARDENNE shall be entitled to apply for the intellectual property rights in its own name. For that purpose, VON ARDENNE receives from Contractor the necessary information and documents. VON ARDENNE shall bear the expenses of the application and maintenance of the intellectual property right and, in case of use, the statutory employee remuneration which would apply to inventors of VON ARDENNE. Such expenses shall not be included in the remuneration pursuant to Sec.4.

10.4. Should VON ARDENNE not be interested in the transfer of rights to an Invention or Invention share, VON ARDENNE shall immediately inform Contractor thereof. In such case, Contractor shall be entitled to apply for the intellectual property right in its own name. VON ARDENNE shall receive a right of use which is non-exclusive, free of charge and without limitation in place and time.

Contractor shall keep all Results and Inventions confidential until the applications for the intellectual property rights in question have been disclosed.

#### **11. Confidentiality**

The parties shall not make available to third parties technical or business information disclosed to each other and declared to be confidential during the period of five years after termination of the Purchase Order. This shall not apply to information that was known or generally available to the other party or the public prior to its disclosure, or that became generally available or known to the public after disclosure without any wrongful act or omission of the other party, or that became generally available or matches information that the other party obtained from an authorized disclosure or that was made accessible to third parties or was independently developed by an employee of the other party who had no knowledge of the information in question.

#### **12. Place of fulfillment, jurisdiction**

12.1. The place of fulfillment for all services is the performance location designated by VON ARDENNE in the Purchase Order.

12.2. Venue shall be the place where VON ARDENNE has its registered office. VON ARDENNE's right to sue Contractor at Contractor's seat shall remain unaffected.

#### **13. Miscellaneous**

13.1. No employment relationship shall occur between the Contractor's employees and VON ARDENNE. Contractor's employees shall not be issued any work instructions by VON ARDENNE staff. Contractor bears sole responsibility for taxation of remuneration. Contractor is advised that he may be obligated to provide pension insurance pursuant to § 2 No. 9 SGB VI if he provides services over a longer period and primarily for only a single customer and if he does not employ employees obligated to insurance.

13.2. Should one or several provisions of these General Conditions of Purchase of Services be invalid, the validity of the remaining provisions shall remain unaffected. In the event of invalidity of a provision, the invalid provision shall be replaced by a valid clause whose economic result corresponds as far as possible to that of the invalid provision.

13.3. The Purchase Order and these General Conditions of Purchase of Services shall be construed with and governed by the law of the Federal Republic of Germany, under exclusion of its conflict of law-rules and the United Nations Convention on the International Sale of Goods (CISG).

13.4. VON ARDENNE declares pursuant § 33 BDSG that VON ARDENNE will store Contractor's data on the basis of the German Data Privacy Act.