

Issued March 2018

## **General Purchase Terms and Conditions**

### **for Atotech Italia Srl**

#### **I. Scope of Application**

1. Unless agreed otherwise in writing, all our orders concern goods and/or services and the relevant relationship shall be governed exclusively by these general purchase terms and conditions (the "T&C").
2. The general terms and conditions for suppliers and other contractual parties (hereinafter "Suppliers") or third parties shall not be binding on us unless expressly accepted in writing and no form of implicit acceptance is accepted or agreed to.
3. This document "General Purchase Terms and Conditions" applies pursuant to Article 1341 of the Italian Civil Code.

#### **II. Purchase orders and orders**

1. Orders, agreements and amendments thereto shall be binding on us only if they are made and confirmed in writing. All correspondence relating to contractual arrangements must only be with the Purchase Division.
2. Suppliers must send their written approval of an order within 14 calendar days of the order date, otherwise we shall be entitled to revoke the order without any consequential obligation or liability.
3. In the event specific expertise or capacity is required to process an order, the Supplier shall provide all relevant confirmation, documentation and certification (of conformity, EC quality, instruction manuals, etc.) directly with their offer, without any specific request. Suppliers shall certify that the products they supply are defect-free and comply with the agreed specifications. Certificates of Conformity for products must be provided if requested.

#### **III. Delivery terms and breach**

1. Delivery terms and dates agreed on in writing are binding. Delivery terms and dates shall be held as complied with if the goods – in addition to complying with contractual requirements – are correctly received and if services are properly provided in full, both in the location

agreed on under the contract and within the agreed term.

2. If a Supplier becomes aware that an agreed delivery date is no longer feasible for whatever reason, it must immediately inform us in writing, explaining the reason why and the expected length of the delay, without prejudice to consequences for breach or delayed delivery provided for by law.
3. Partial deliveries shall only be accepted if we have accepted this in writing in advance. In the event of a partial delivery, the delivery documents must specify that it is a partial delivery and also the quantity still to be delivered.
4. In the event of a breach by a Supplier, we shall be entitled to apply liquidated damages of 0.3% of the total consideration agreed on under contract, for each day of delay or part thereof, up to a maximum of 5% of the agreed consideration, without prejudice to further damages. The liquidated damages may be requested at the time of payment of the fees for the goods and/or services.
5. In the event of early delivery, we are entitled to return a delivery at the cost of Supplier. If said right is not exercised, the goods shall be stored at our warehouse at the cost and risk of Supplier until the agreed delivery date. In the event an early delivery is accepted, the relevant payment term shall be calculated on the basis of the agreed delivery date.

#### **IV. Termination**

1. We shall be entitled to terminate agreements by law in any of the following situations:
2. If a Supplier delays a delivery by more than 30 days beyond the agreed delivery date.
3. If Supplier delivers a product that is not consistent with the product ordered.
4. If a Supplier is subject to an insolvency procedure or if an application for insolvency is lodged.

## **V. Packaging and Transportation**

1. Products must be accurately packaged and all packaging must be suitable to the circumstances. If packaging materials are not agreed on contractually, the Supplier may only use suitable materials that do not harm the environment and that may be recycled.
2. If products are not going to be delivered to our company's premises, we will need to receive a copy of the delivery note anyway.
3. Delivery must not come at an extra cost, neither for packaging, loading, transportation nor insurance, unless agreed otherwise in writing. The risk for the loss or damage to goods shall transfer to us upon our receipt of said goods at the delivery location.
4. Our order number must be specified on all documentation relating to delivery.
5. Additional expenses for express delivery, which are required to meet a set delivery date, shall be borne by the Supplier.

## **VI. Invoicing and payments**

1. Invoices must specify our order number and the Transport Document number. Invoices that fail to do so shall not be payable.
2. Expiry and payment dates shall not take effect prior to the complete delivery of the products to the recipient's address and/or the complete provision of the agreed services, or prior to our receipt of the relevant invoice. In the event that a supplier needs to test materials, to provide test reports, documents relating to quality or other documents, the receipt of said documentation by us is an essential condition for the completion of a delivery/provision of a service. The expiry dates and payment terms shall not take effect prior to the completion of the above activities. In the event of any breach whatsoever by a Supplier, we shall be entitled to refuse payment.
3. We reserve the rights to offset and withhold payments and to object to a breach, to the extent permitted by law. In particular, we shall be entitled to withhold payment for the entire duration we hold a valid request against Supplier due to an incomplete or incorrect delivery.
4. Unless agreed on otherwise, payment shall be made as follows:
  - Within 14 days with a 3% discount,
  - Within 30 days and a 2% discount,

- Within 90 days and no discount
5. Discounts shall be valid even in the case we oddest or withhold reasonable amounts for defective goods and/or services.
  6. Payments shall not constitute acknowledgment that a delivery or the provision of a service complies with the contractual provisions, and as such, shall not constitute a waiver of rights or of remedy.

## **VII. Rights in the event of breach, limitations, spare and replacement parts**

1. In the event of defective goods and/or services, all applicable provisions of law shall apply as of the time of an order/the engagement for a service.
2. Any defects, be it evident or hidden, may be communicated by us to a Supplier within two weeks of discovering them.
3. The Supplier undertakes to provide spare parts and replacements for worn parts for products delivered to us, for a period of at least 10 years from the last delivery.
4. In the event that Supplier wishes to suspend production of spare parts or replacement parts for products delivered to us, they must inform us immediately after taking said decision to suspend production. The decision must be taken – subject to clause 4 below – at least 3 months prior to effectively ceasing production.

## **VIII. Retention of title**

A clause by Supplier relating to the title to ownership is only valid if it refers to our payment obligations for products whose ownership the Supplier has title to, hence clauses retaining ownership beyond that scope are not valid.

We are entitled to request Supplier, and the latter is obliged to provide, a copy of the relevant terms and conditions of the civil liability insurance policy against product damage, which must also include the risk for recall and replacement costs, with a suitable liability limit.

## **IX. Product quality and liability for product damage**

1. For the entire duration of the relevant contract, the Supplier must obtain third party liability and workers' liability insurance coverage with a leading insurance provider and with a suitable

liability limit (at least €1,000,000). For the same period, the Supplier must also obtain insurance against product damage, which includes recall and replacement costs and has a suitable limit. We are entitled to request the Supplier, who is obliged to provide us, with a copy of said insurance policies and insurance terms and conditions.

2. The Supplier undertakes to guarantee and to indemnify any claim or request, including for damages, made by a third party for circumstances caused by the Supplier.

#### **X. Intellectual property rights, right of use, confidentiality**

1. The Supplier undertakes to procure that the stipulation and the performance of the agreement, in particular with respect to the use of the goods delivered thereunder, shall not infringe third party intellectual property rights.
2. The Supplier shall indemnify and hold us harmless from and against all claims made by a third party against us deriving from the breach of intellectual property rights, specified in paragraph 1, and reimburse all costs incurred in relation to such claims.
3. All documentation (such as photos, designs, technical drawings, information, etc) and their contents that for whatever reason is provided or communicated to Supplier, is understood to be confidential and the exclusive property of Atotech, hence must not be disclosed to third parties in any way whatsoever. Upon termination of the contractual relationship, any documentation that we have provided shall be promptly returned to us by Supplier, including therein all copies, even if not expressly requested by us.
4. The Supplier undertakes to procure that the stipulation and the performance of the agreement, in particular with respect to the use of the goods delivered thereunder, shall not infringe third party intellectual property rights.
5. The Supplier shall indemnify and hold us harmless from and against all claims made by a third party against us deriving from the breach of intellectual property rights, specified in paragraph 1, and reimburse all costs incurred in relation to such claims.
6. All documentation (such as photos, designs, technical drawings, information, etc.) and their content that for whatever reason is provided or communicated to Supplier, is understood to be confidential and the exclusive property of Atotech, hence must not be disclosed to third

parties in any way whatsoever. Upon termination of the contractual relationship, any documentation that we have provided shall be promptly returned to us by Supplier, including therein all copies, even if not expressly requested by us.

7. The Supplier shall grant us an indefinite, worldwide, non-exclusive and transferable license, having the agreed characteristics, required to for use in contracts relating to software that is part of the service being provided, including the relevant documentation.
8. The Supplier must keep strictly confidential the existence, the content and the terms of their relationship with us. Said obligation also applies to anyone who operates on behalf of Supplier and/or whose activity is liable. The confidentiality undertaking must apply also to all know-how and information acquired during collaboration, such as for example information concerning our organisation, development and structures and/or the content of our orders, in particular with reference to pricing, quantities and conditions.
9. The Supplier must transfer the right to apply for acknowledgement of intellectual property rights for all inventions made by them or their personnel throughout the duration of the agreement for its performance. Said grant and acknowledgement of rights shall be completed free of charge.

#### **XI. Presence at our premises**

The Supplier's personnel present at our premises must comply with the provisions of all our company policies in force.

#### **XII. Code of Conduct, environment protection, safety**

1. We undertake to comply with the values and principles listed in the Atotech Code of Conduct. In particular, those include compliance with law and main international standards, environmental protection and occupational health and safety, respecting human rights and free competition, the rejection of all forms of corruption in the private and public sectors, and avoiding all conflicts of interest.
2. The Supplier confirms that they are aware of the content of our Code of Conduct and to comply with equivalent values and principles. Moreover, the Supplier undertakes to promote said values and principles and to procure compliance therewith by its own suppliers. The Atotech Code of Conduct may be downloaded from [www.atotech.com/our-values-and-priorities/](http://www.atotech.com/our-values-and-priorities/).

3. We reserve the right to conduct either directly or via a duly appointed third party in writing, inspections at the Supplier's premises to assess compliance with said values and principles. The Supplier assures us their full collaboration for the duration of any such inspection. We undertake to maintain confidentiality with respect to all the information disclosed during any such inspection and to use it only for the purpose of the inspection.
4. The agreement shall be terminated automatically in the event Supplier breaches said values and/or principles or should the Supplier unreasonably prevent such an inspection and fail to adopt the necessary measures to mitigate the impact of a breach or in the event of a material breach by Supplier of the values and principles, such as by way of example the breach of human rights, child labour, discrimination or breaching employment laws, environmental protection or industrial safety breaches or breaching organised crime laws.
5. Given their liability for occupational health and safety, the Supplier undertakes to mitigate adverse effects of its commercial operations on people and on the environment on a continuous and regular basis. To the extent possible, the Supplier shall introduce and develop a management system based on ISO 14001.
6. The Supplier undertakes to provide all the information relating to potential risks in equipment, machinery, work tools, products, chemical substances and materials used for production and manufacturing that they shall provide to us.

### **XIII. Conflict minerals, legal compliance**

1. The Supplier accepts the application of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), in particular provisions relating to minerals (Section 1502). Moreover, the Supplier acknowledges the significant risks – legal and other – connected with the mining of wolframite, cassiterite and columbite-tantalite (coltan) and the metals derived from them tin, tantalum and tungsten ("conflict metals") from the Democratic Republic of Congo and bordering countries ("DRC countries"). The Supplier represents, undertakes, consents and acknowledges, for our benefit and that of our customers, that:
  - a. Goods delivered to us do not contain conflict minerals from DRC countries and if any goods delivered to us do contain conflict minerals, said goods shall be free from

conflicts relating to DRC countries according to the Dodd-Frank Act.

- b. They have a procurement policy and processes in place to carry out: (i) reasonable investigations into the country of origin of conflict minerals contained in products delivered to us; (ii) a due diligence into the procurement process if necessary, to establish if conflict minerals mined in DRC countries directly or indirectly sustain unlawful conduct; and (iii) a risk assessment and required action for investigations into countries of origin and due diligence.

The Supplier undertakes to prepare all written documentation, including certification, that we or our customers might reasonably request to confirm and certify the above.

2. If goods delivered to us contain chemical substances governed by the following legislation as amended:

- USA - Toxic Substances Control Act (TSCA)
- Canada - Domestic Substances List (DSL)
- EU - European Inventory of Existing Commercial Chemical Substances (EINECS)/ European Inventory of Existing Commercial Chemical Substances (ELINCS)/ Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
- China - Inventory of Existing Chemical Substances Produced or Imported in China (IECSC)
- Taiwan - Toxic Chemical Substance Control Act (TCSCA)
- Japan - Existing and New Chemical Substances Inventory (ENCS)
- Korea - Existing Chemicals List (ECL)
- Philippines - Philippine Inventory of Chemicals and Chemical Substances (PICCS)
- Australia - Australian Inventory of Chemical Substances (AICS)

The Supplier hereby declares that they shall take all necessary measures to comply therewith and to procure the compliance by their subcontractors with all the obligations provided for by such legislation, as amended in the future. The Supplier shall be held liable for all consequences deriving from the failure to comply with said legislation. If any chemical substance contained in goods delivered to us cannot be sold because it is prohibited by the above-mentioned legislation, the Supplier shall inform us in writing thereof at least six (6) months prior to the date after which the products can no longer be sold..

3. The Supplier shall hold harmless and indemnify our customers from and against any charge deriving from the breach of the Supplier's obligations under this clause or from any inaccurate or incorrect information or written documentation that is provided to our customers.

- b) That trustworthy and competent personnel shall be used for production, storage, preparation, processing, loading and transportation of all goods; and
- c) That commercial partners acting on behalf of the supplier shall be informed that they will also be required to ensure the safety of the supply chain, as detailed above.

#### **XIV. Exportation and customs**

1. The Supplier shall comply with all requirements provided for by applicable national and international law governing customs and trade abroad. The Supplier shall provide us in writing within two weeks of receiving our purchase order – and immediately in the event of changes – with all information and data we shall require to comply with laws and regulations governing exportation, importation and re-exportation, in particular:
  - All the numbering in the exportation list, including the Classification Number for Exportation Controls based on the Commerce Control List for the US (ECCN);
  - The commodity code based on the current classification of commodities for statistics on trade abroad and the HS (Harmonized System) code;
  - The country of origin (non-preferential) and at our request, a declaration from the supplier relating to the preferential origin (for European suppliers) or certificate of preference (for non-EU suppliers).
2. If the Supplier breaches its obligations under section XIV.1, it must bear all the cost and damages that are incurred as a result of the breach.

#### **XV. Safety and supply chain**

1. The Supplier may use subcontractors if we authorise them in advance.
2. The Supplier represents that:
  - a) All goods produced, stored and dispatched for our orders and then delivered to us:
    - Shall be produced, stored, prepared, processed and loaded in commercial premises that are safe and in safe loading and delivery areas;
    - Shall be protected from unauthorised interference during production, storage, preparation, processing, loading and transportation;

#### **XVI. Miscellaneous**

1. The place of contractual performance shall be the location where the goods and/or services have to be used.
2. In the event of any dispute between the parties relating hereto shall be submitted to the exclusive Courts of Milan.
3. These general terms and conditions and relevant relationships deriving here from shall be governed by Italian law.
4. The Supplier may not assign its rights or obligations deriving here from to a third party unless we authorise that in advance in writing.
5. All amendments and/or corrections made to these general terms and conditions must be made by us in writing.