General Terms and Conditions of Purchase of DATAGROUP Rhein-Main GmbH (hereinafter referred to as ‘DATAGROUP’)

Last updated: 1 April 2025

Section 1 Scope of application, form

(1) These General Terms and Conditions of Purchase (GTCP) apply to all business relationships between DATAGROUP and our business partners and suppliers (‘Vendor(s)’). The GTCP shall only apply if the Vendor is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCP apply in particular to contracts for the sale and/or delivery of movable goods (‘Goods’), irrespective of whether the Vendor manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the Buyer’s order or in any case in the version last communicated to them in text form shall also apply as a framework agreement for similar future contracts without us having to refer to the GTCP again in each individual case.

(3) These GTCP apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Vendor shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This requirement of consent shall apply in all cases, for example even if we accept the Vendor’s deliveries without reservation in the knowledge of the Vendor’s General Terms and Conditions.

(4) DATAGROUP Rhein-Main GmbH has been a member of the Compass Group since 1 January 2023. Compass contract suppliers are subject to the contractual terms and conditions that are negotiated and agreed with the Compass Group on an annual basis.

(5) Individual agreements made with the Vendor in individual cases (including collateral agreements, supplements and amendments) shall always take precedence over these GTCP. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(6) Declarations with legal relevance and notifications by the Vendor in relation to the contract (e.g. setting of deadlines, reminders, cancellation) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.

(7) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCP.

Section 2 Conclusion of contract

(1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The Vendor shall notify us of obvious errors (e.g. spelling mistakes and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The Vendor is obliged to confirm our order in writing within a period of 3 days or, in particular, to fulfil it without reservation by dispatching the Goods (acceptance).

Delayed acceptance shall be deemed a new offer and requires acceptance by us.

Section 3 Delivery time and delay in delivery

(1) The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be deemed to be 2 weeks from conclusion of the contract. The Vendor is obliged to inform us immediately in writing if they believe they may be unable to meet agreed delivery times for any reason whatsoever.

(2) If the Vendor does not provide their service or does not do so within the agreed delivery time, the Vendor shall be in default and our rights, in particular to cancellation and compensation, shall be determined in accordance with the statutory provisions. The provisions in paragraph (3) remain unaffected.

(3) If the Vendor is in default, we may, in addition to further statutory claims, demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per full calendar week, but not more than 5% of the net price of the Goods delivered late in total. We reserve the right to furnish proof that higher damages have been incurred. The Vendor reserves the right to furnish proof that no damage at all or only significantly less damage has been incurred.

Section 4 Performance, delivery, transfer of risk, default of acceptance

(1) The Vendor is not authorised to have the service owed by it performed by third parties (e.g. subcontractors) without our prior written consent. The Vendor shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) Delivery within Germany is free of charge to the location specified in the order. If the destination is not specified and no other agreement has been made, the delivery must be made to Nahetal Logistik GmbH, Alfred-Nobel-Straße 15, 55411 Bingen. The respective destination is also the place of fulfilment for the delivery and any subsequent fulfilment (obligation to fulfil).

(3) The delivery must be accompanied by a delivery note stating the date (issue and dispatch), contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content must be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon handover at the place of fulfilment. If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the event of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Vendor must also expressly offer us its service if a specific or determinable calendar time has been agreed for an action or cooperation by us (e.g. provision of material). If we are in default of acceptance, the Vendor may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a non-fungible item to be manufactured by the Vendor (customised production), the Vendor shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

Section 5 Prices and terms of payment

(1) The price stated in the order is binding. All prices include statutory value added tax if this is not shown separately.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Vendor (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price shall be due for payment within 45 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. The terms of payment agreed with the Compass Group apply to Compass contract suppliers. With regard to bank transfers, payment is deemed to have been made on time if our transfer order is received by our bank before expiry of the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any maturity interest. The statutory provisions shall apply to default in payment.

(5) We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments insofar as we are still entitled to claims against the Vendor arising from incomplete or defective services.

(6) The Vendor shall only have a right of set-off or retention on the basis of legally established or undisputed counterclaims.

Section 6 Confidentiality and retention of title

(1) We reserve the property rights and copyright to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and returned to us after completion of the contract. The documents must be kept confidential from third parties, even after termination of the contract. The confidentiality obligation shall only expire if and insofar as the knowledge contained in the respective documents has become common knowledge.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items that we provide to the Vendor for production. Such items shall, as long as they are not processed, be stored separately at the Vendor's expense and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of items provided by the Vendor shall be carried out on our behalf. The same applies if we further process the delivered Goods and we are therefore deemed to be the manufacturer and acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(4) The transfer of ownership of the Goods to us must take place unconditionally and without regard to the payment of the price. However, if in individual cases we accept an offer from the Vendor for transfer of ownership conditional on payment of the purchase price, the Vendor's retention of title shall expire at the latest upon payment of the purchase price for the delivered Goods. We shall remain authorised to resell the Goods in the ordinary course of business, even before payment of the purchase price, subject to advance assignment of the resulting claim (alternatively, the simple reservation of title extended to the resale shall apply). This excludes all other forms of retention of title, in particular the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

Section 7 Defective delivery

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the Goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating instructions or instructions for use) and in the event of other breaches of duty by the Vendor, unless otherwise specified below.

(2) In accordance with the statutory provisions, the Vendor shall be liable, in particular, for ensuring that the Goods have the agreed quality when the risk passes to us. In all cases, the product descriptions which, in particular by designation or reference in our order, are the subject of the respective contract or have been included in the contract in the same way as these GTCP shall be deemed to be an agreement concerning quality. It does not matter whether the product description comes from us, from the Vendor or from the manufacturer.

(3) We are not obliged to inspect the Goods or make special enquiries about any defects upon conclusion of the contract. Partially deviating from Section 442 (1) (2) BGB, we are therefore entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) The statutory provisions (Sections 377, 381 HGB) shall apply to the commercial obligation to inspect and give notice of defects with the following proviso: Our duty of inspection shall be limited to defects which become apparent during our incoming goods inspection by external examination, including the delivery documents, (e.g. transport damage, incorrect and short delivery) or which are recognisable during our quality control by random sampling. If acceptance has been agreed, there is no obligation to inspect. Furthermore, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to inspect, our complaint (notification of defects) shall be deemed to have been made immediately and before the deadline if it is sent within 10 working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent fulfilment shall also include the removal of the defective Goods and reinstallation insofar as the Goods have been installed in another item or attached to another item in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Vendor shall bear the expenses necessary for the purpose of inspection and subsequent fulfilment even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests to remedy defects shall remain unaffected; however, we shall only be liable in this respect if we recognised, or were grossly negligent in not recognising, that there was no defect.

(6) Notwithstanding our statutory rights and the provisions in paragraph (5), the following shall apply: If the Vendor does not fulfil its obligation to subsequent performance, at our discretion by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery), within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement of the necessary expenses or a corresponding advance payment from the Vendor. If subsequent fulfilment by the Vendor has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damages), no deadline needs to be set; we shall inform the Vendor about such circumstances immediately, if possible in advance.

(7) Otherwise, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect or defect of title in accordance with the statutory provisions. We are also entitled to compensation for damages and expenses in accordance with the statutory provisions.

Section 8 Supplier recourse

(1) Our statutory rights of recourse within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 BGB) are available to us without restriction in addition to claims for defects. In particular, we are entitled to demand the same exact type of subsequent fulfilment (rectification or replacement delivery) from the Vendor that we owe our customer in the individual case. Our statutory right of choice (Section 439 (1) BGB) is not restricted by this.

(2) Before we recognise or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with Sections 445a (1), 439 (2) and (3) BGB), we shall notify the Vendor and request a written statement with a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Vendor shall bear the burden of proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective Goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

Section 9 Producer liability

(1) If the Vendor is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organisation and it is liable in relation to third parties.

(2) As part of its obligation to indemnify, the Vendor must reimburse expenses pursuant to Sections 683, 670 BGB arising from or in connection with claims asserted by third parties, including recalls carried out by us. We will inform the Vendor, as far as possible and reasonable, about the content and scope of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.

(3) The Vendor shall take out and maintain product liability insurance with a lump sum cover of at least EUR 5 million per personal injury/property damage event.

Section 10 Force majeure

In cases of force majeure, such as, in particular, fire damage, floods, strikes, lawful lockouts and epidemics (including epidemics and pandemics, insofar as a risk level of at least 'moderate' is defined by the Robert Koch Institute), as well as due to official measures imposed by the authorities, the contracting party affected by this shall be released from the obligation to deliver or accept for the duration and to the extent of the impact.

Section 11 Statute of limitations

(1) The reciprocal claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding Section 438 (1) (3) BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for third-party claims for return (Section 438 (1) (1) BGB) shall remain unaffected; furthermore, claims arising from defects of title shall never become time-barred as long as the third party can still assert the right, in particular in the absence of a limitation period, against us.

(3) The limitation periods of sale of goods law, including the above extension, apply, to the extent permitted by law, to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply, unless the application of the limitation periods of sale of goods law leads to a longer limitation period in individual cases.

Section 12 Choice of law and jurisdiction

(1) These GTCP and the contractual relationship between us and the Vendor shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Vendor is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive, also international, place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Ingelheim. The same applies if the Vendor is an entrepreneur within the meaning of Section 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of fulfilment of the delivery obligation in accordance with these GTCP or an overriding individual agreement or at the general place of jurisdiction of the Vendor. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.