

Conditions of Purchase of Flender BVBA/SPRL

Version 1 December 2017

1. Field of Application, Order and Order Confirmation

- 1.1 These Conditions of Purchase shall apply to all purchases of Flender BVBA/SPRL of tangible and/or intangible goods and/or services. They also shall apply to other agreements in which Flender BVBA/SPRL is involved as the customer, i.e. in contracts of undertaking, hire contracts or contracts for assembly and services.
- 1.2 These Conditions of Purchase shall apply subsidiarily to the conditions set forth in the order of Flender BVBA/SPRL and, as the case may be, to special terms of purchase provided by Flender BVBA/SPRL.
- 1.3 By accepting the order the supplier acknowledges that it has read these Conditions of Purchase and that it accepts them without reservation. Any alterations, amendments or additions to the order shall only become a part of the contract if Flender BVBA/SPRL agrees to them in writing. The acceptance of deliveries or services as well as payments do not constitute such agreement.
- 1.4 As long as the supplier has not confirmed acceptance of the order ("Order Confirmation") in writing, Flender BVBA/SPRL may cancel the order without incurring any liability.
- 1.5 Commencement of implementation of the order shall be considered as acceptance of the order including any special terms of purchase provided by Flender BVBA/SPRL and including these Conditions of Purchase.
- 1.6 Should a provision of these Conditions of Purchase be illegal, invalid or unenforceable, all other provisions shall remain valid.

2. Rights of Use

- 2.1 The supplier hereby grants to Flender BVBA/SPRL the following non-exclusive, transferable, worldwide and perpetual rights:
 - 2.1.1 to use the deliveries and services, to integrate them into other products and to distribute them worldwide;
 - 2.1.2 to use or allow others to use software and its related documentation (collectively "Software") in connection with the installation, launch, testing and operation of the Software and the deliveries and services;
 - 2.1.3 to sublicense the right of use under section 2.1.2 above to affiliates (companies, directly or indirectly, controlled by, or controlling, or under common control with Siemens AG; hereinafter "Affiliates"), to distributors and end customers;
 - 2.1.4 to license Affiliates and distributors, to sublicense the right of use under section 2.1.2 above to end customers;
 - 2.1.5 to use the Software for integration into other products and to copy the Software, or to allow Affiliates or distributors to use and copy the Software;
 - 2.1.6 to distribute, sell, hire out, lease, make ready for download or make publicly available the Software, e.g. in the context of application service providing or in other contexts, and to copy the Software to the extent required, always provided that the number of licenses being used at any one time does not exceed the number of licenses purchased;
 - 2.1.7 to sublicense the right of use under section 2.1.6 above to Affiliates and distributors.
- 2.2 In addition to the rights granted in section 2.1 above, Flender BVBA/SPRL, Affiliates and other distributors are authorized to allow end customers to transfer Software licenses.
- 2.3 The supplier shall inform Flender BVBA/SPRL - at the latest at the time the order is confirmed - whether the products and services to be delivered contain "open source software".

In the context of this provision "open source software" means any software that is provided royalty-free by the respective licensor to any user on the basis of a license or another agreement with the right to modify and/or to distribute such software. By means of example and without limitation, Open License Terms include the following licenses: the GNU General Public License (GPL), the GNU Lesser GPL (LGPL), the BSD License, the Apache License or the MIT License. Should the products and services delivered by the supplier contain open source software, the supplier must deliver to Flender BVBA/SPRL at the latest at the time the order is confirmed the following:

 - The source code of the relevant open source software, insofar as the applicable open source conditions allow the disclosure of this source code;
 - A schedule of all open source files used, indicating the relevant license and including a copy of the complete text of such license
 - A written declaration that through the intended use of the open source software neither the products of the supplier nor the products of Flender BVBA/SPRL will be subject to a "Copyleft Effect". In the context of this provision, "Copyleft Effect" means that the provisions of the open source license require that certain of the supplier's products, as well as any products derived from these, may only be distributed further in accordance with the terms of the open source license e.g. only if the source code is disclosed.

If the supplier does not indicate before the receipt of the order that its products or services contain open source software, Flender BVBA/SPRL is, after discovering that the products or services contain open source software, entitled to, or terminate the contract within fourteen (14) days after discovery, or request the supplier to deliver the information contained in the above paragraph. If the supplier fails to deliver this information within a reasonable time, Flender BVBA/SPRL is entitled to terminate the contract.

3. Rescheduling, Delay

- 3.1 The supplier undertakes to supply the goods and services in accordance with the requirements of time and place as set out in the order. For the purpose of establishing the timeliness of delivery or rectification, the relevant point in time is the date of receipt at the place of receipt designated by Flender BVBA/SPRL, and for deliveries involving installation, commissioning or rectification services, the relevant point in time shall be the date of acceptance.
- 3.2 Upon giving the supplier at least ten (10) calendar days prior notice ("Postponement Notice"), Flender BVBA/SPRL may postpone the date of delivery at no cost to Flender BVBA/SPRL.
- 3.3 Where any delay in delivery or performance or rectification can be anticipated, the supplier shall notify Flender BVBA/SPRL immediately and seek its decision.
- 3.4 Flender BVBA/SPRL reserves the right to reject any delivery which does not conform to the requirements of time and place as set out in the order or, as the case may be, in the Postponement Notice and to return such delivery to the supplier at the risk and cost of the supplier.
- 3.5 In the event of delay, Flender BVBA/SPRL may, without previous notice, impose liquidated damages in respect of each commenced working day of delay amounting to 0.5% of the total value of the contract, without prejudice to any other rights of Flender BVBA/SPRL, including the right to demand compensation for the actual damage incurred by Flender BVBA/SPRL due to the delay.

4. Transfer of Risk, Dispatch and Place of Performance

- 4.1 For deliveries involving installation, commissioning, software or services, the transfer of risk occurs on final acceptance. For other deliveries the transfer of risk shall take place at the time of Flender BVBA/SPRL confirming the receipt of the delivery by signing the dispatch note without reservation or, in the absence of such note, upon receipt by Flender BVBA/SPRL of the deliveries without reservation at the designated place of receipt.
- 4.2 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the supplier. In case of pricing ex works or ex warehouse, transport shall in each case be at the lowest possible cost, insofar as Flender BVBA/SPRL has not requested a particular method of delivery. Where the price is quoted free to the recipient, Flender BVBA/SPRL may determine the method of transportation. Any supplementary costs arising from the need to meet the delivery deadline by way of expedited delivery shall be borne by the supplier.
- 4.3 Each delivery shall include two dispatch notes, dated and numbered, with details of the contents as well as stating the order number.
- 4.4 If the transport is performed by a carrier commissioned by Flender BVBA/SPRL, the supplier will inform the carrier of the necessary data concerning dangerous goods in accordance with the legal requirements. The same shall apply with regard to a further carrier, if Flender BVBA/SPRL informs the supplier that following the initial transport another transport is scheduled.
- 4.5 The supplier shall be liable for any expenses and/or damages incurred by Flender BVBA/SPRL due to any breach of the obligations under this Art. 4.

5. Invoices

- 5.1 All invoices shall be addressed and sent to the registered office of Flender BVBA/SPRL (Accounting department).
- 5.2 Each invoice shall at least detail the relevant purchase order number, the numbers and quantities of the invoiced items and the invoice date. Insofar as any such details are omitted, the invoice shall not be payable.
- 5.3 Copies of an invoice shall be marked as duplicates. The supplier shall not combine several orders on one invoice.

6. Payment

- 6.1 Payments shall be made in Euros and are due and payable no later than sixty (60) calendar days from the end of the month (i) after receipt by Flender BVBA/SPRL of a correctly issued invoice or (ii) after the completion of the delivery or the performance of the services, whichever of (i) or (ii) occurs later. If payment is made within ten (10) calendar days of the respective end of the month, Flender BVBA/SPRL is entitled to a 3 % discount.
- 6.2 Insofar as the supplier is required to provide material testing, test records or quality control documents or any other documentation, such shall be a part of the requirements of the completeness of the delivery or performance of the services. The provisions on discounts shall also apply if Flender BVBA/SPRL sets off or withholds any payments to a reasonable extent on account of any deficiency. The period for payment shall in that case commence at the end of the month after the complete rectification of the deficiency.
- 6.3 A payment shall be deemed overdue only if Flender BVBA/SPRL fails to pay in response to a notification in writing received after payment becomes due.
- 6.4 Payment does not constitute an acknowledgement of Flender BVBA/SPRL that the corresponding deliveries or services meet the specifications or are free of defects.

7. Inspections

- 7.1 Flender BVBA/SPRL may but is not obligated to carry out any inspections upon receipt of the deliveries including examining whether a delivery corresponds to the quantity and type of products ordered and whether there is any external recognizable transportation damage or another deficiency. The execution or non-execution of inspections shall not in any way affect the liability of the supplier.
- 7.2 Should Flender BVBA/SPRL, however, discover any deficiency in the course of such inspections or at a later stage, it shall inform the supplier of such deficiency within a reasonable time.

8. Warranty

- 8.1 The supplier warrants (i) that it has title to the goods (ii) that the goods are free and clear of any security interest, lien or encumbrances, (iii) that the goods are newly manufactured and meet the agreed specifications, (iv) that the goods are free from defects in design, material and workmanship, without development defects or manufacturing defects, are fit for purpose and conform with all applicable legal and administrative requirements, applicable industry standards, norms and safety regulations in Belgium, at the place of receipt and at the designated place of use, (v) that it will carry out the services within the time periods agreed and with all reasonable care and skill in accordance with all applicable laws and all provisions agreed in the contract, in particular the service levels, and (vi) that it has examined any Software for viruses and security gaps and has removed any viruses and security gaps prior to the delivery of the Software.
- 8.2 If in the order reference is made to technical, safety, quality or other provisions and documents which are not appended to the order, the supplier shall be considered to be familiar therewith, unless the supplier has notified Flender BVBA/SPRL of the contrary in writing immediately.
- 8.3 If Flender BVBA/SPRL notifies to the supplier that any goods or services fail to meet any of the warranties specified in Art. 8.1, the supplier shall at its own expense and at the discretion of Flender BVBA/SPRL without undue delay either (i) repair the deficiency or (ii) provide re-performance of services or replacement of deliveries. Flender BVBA/SPRL may as well choose to (iii) demand a reduction in price, (iv) cancel the contract in whole or in part without incurring any liability, (v) claim damages in lieu of performance or (vi) undertake itself any repair or re-performance of service or replacement of delivery or arrange for such to be done, all at the expense of the supplier.
- 8.4 The supplier shall indemnify Flender BVBA/SPRL against any and all cost (including those related to the transportation, de-installation, re-installation and commissioning in connection with the performance of the warranty obligations), any damage of whatever nature or liability arising from supplier's non-compliance with any warranty or other obligation under this Art. 8.
- 8.5 Insofar as no statutory provisions provide for a longer period, the warranty period shall be three years. The warranty period shall start to run with the transfer of risk as defined in Art. 4.1. If the supplier provides subsequent performance or repairs, the warranty period shall start to run again.
- 8.6 With regard to hidden defects, Flender BVBA/SPRL shall keep its warranty rights even after the warranty period has elapsed in accordance with the Belgian statutory provisions in relation to hidden defects (articles 1641-1649 Belgian Civil Code).
- 8.7 Should a third party demand compensation from Flender BVBA/SPRL in relation to a deficiency of goods and services provided by the supplier, the supplier undertakes to support Flender BVBA/SPRL in the defense of the claim, intervene voluntarily in any proceedings, whether they be judicial or extra-judicial, and to make available to Flender BVBA/SPRL all relevant documentation and information, and to bear all the costs and fees related to the defense of Flender BVBA/SPRL.
- 8.8 The supplier undertakes to take out adequate insurance to cover its warranty risks and undertakes to furnish evidence thereof to Flender BVBA/SPRL upon request.

9. Third Party Rights

- 9.1 The supplier undertakes to inform Flender BVBA/SPRL in relation to the goods and services provided by supplier of any possible conflicting third party rights, i.e. intellectual property rights.
- 9.2 The supplier shall indemnify Flender BVBA/SPRL against any possible cost, any damage of whatever nature or liability in direct or indirect relation to any infringement or alleged infringement of third party rights, i.e. intellectual property rights, in relation to the goods and services provided by supplier.
- 9.3 In addition, the supplier undertakes at its own expense, at Flender BVBA/SPRL's first request and at the discretion of Flender BVBA/SPRL, either to replace or modify the infringing or allegedly infringing goods with equivalent, non-infringing goods or to obtain a license in favor of Flender BVBA/SPRL for continued usage.

10. Provided Material

Material provided by Flender BVBA/SPRL remains the property of Flender BVBA/SPRL and is to be labeled as property of Flender BVBA/SPRL and stored and administered separately. Its use is limited to the orders of Flender BVBA/SPRL only.

11. Confidentiality

- 11.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates, documents, materials and other information (collectively "Information") provided by Flender BVBA/SPRL shall remain the property of Flender BVBA/SPRL and shall, without the prior written consent of Flender BVBA/SPRL, not be made available to any third party nor used for any other purposes than those contractually agreed. Such Information shall be protected against unauthorized access or use. The supplier is obliged to return any Information to Flender BVBA/SPRL upon first request.
- 11.2 In the event of the supplier's non-compliance with the obligations stated in Art. 11.1, Flender BVBA/SPRL shall be entitled to withdraw from the contract either in full or in part and/or to demand compensation.
- 11.3 The provisions of this Art. 11 shall remain in place for a period of ten years after termination for whatever reason or expiration of the respective contract.

12. Subcontracting to Third Parties, Assignment of rights and obligations

- 12.1 The supplier shall without the prior written consent of Flender BVBA/SPRL not be allowed to subcontract the contract with Flender BVBA/SPRL to any third party or to transfer the contract or any rights or obligations thereunder to any third party. In case of non-compliance, Flender BVBA/SPRL shall be entitled to terminate the contract either in full or in part and/or to demand compensation.
- 12.2 Flender BVBA/SPRL may entirely or partly transfer the contract and any rights and obligations thereunder to any of its Affiliates and – in connection with any type of merger, divestiture or any other type of business reorganization or business combination, including the establishment of joint venture companies – to any third party.

13. Termination

- 13.1 Flender BVBA/SPRL may, by giving written notice to the supplier, terminate the contract, in whole or in part, without liability to the supplier and save of any other rights and claims Flender BVBA/SPRL may have, with effect from the date specified in the termination notice, if the supplier:
- 13.1.1 voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it or is liquidated or suffers from other circumstances that negatively affect its ability to obtain credit;
- 13.1.2 fails to perform any of its contractual obligations, provided that where such breach is capable of remedy, the supplier fails to remedy such breach without undue delay of being notified of such breach by Flender BVBA/SPRL.
- 13.2 In the event of termination, Flender BVBA/SPRL may continue to utilize existing facilities, deliveries or services already performed by the supplier in exchange for reasonable payment.
- 13.3 In case of a termination pursuant to Art. 13.1.2, the supplier shall compensate Flender BVBA/SPRL upon first request for any damage of whatever nature with a minimum fixed penalty of 15 % of the total value of the contract.
- 13.4 Flender BVBA/SPRL may terminate the contract, in whole or in part, for its convenience at any time by giving at least twenty (20) calendar days notice to the supplier. In such case, the supplier shall be entitled to receive payment for all the services, works and deliveries performed prior to the date of termination. The supplier shall not be entitled to claim any damage whatsoever, including damage for lost profits and expenses incurred due to the termination of the contract.

14. Siemens Code of Conduct, Security in the Supply Chain

- 14.1 The supplier is obliged to comply with the laws of the applicable legal system(s). In particular, the supplier will not engage, actively or passively, nor directly or indirectly in any form of bribery, in any violation of basic human rights of employees or any child labor. Moreover, the supplier will take responsibility for the health and safety of its employees, the supplier will act in accordance with the applicable environmental laws and will use best efforts to promote the Siemens Code of Conduct among its own suppliers.
- 14.2 In order to guarantee security in the supply chain according to the requirements of internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT), the supplier shall provide the necessary organizational instructions and take the necessary measures, particularly with regard to the following security issues: premises security, packaging and transport, business partners, personnel and information. The supplier shall protect the goods and services provided to Flender BVBA/SPRL or provided to third parties designated by Flender BVBA/SPRL against unauthorized access and manipulation. The supplier shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.
- 14.3 In addition to other rights and remedies Flender BVBA/SPRL may have, Flender BVBA/SPRL may terminate the contract, in whole or in part, in case of breach of these obligations by the supplier. However, provided that supplier's breach of contract is capable of remedy, Flender BVBA/SPRL's right to terminate is subject to the proviso that such breach has not been remedied by the supplier within a reasonable grace period set by Flender BVBA/SPRL.

15. Environmental Protection, Duties to Declare, Dangerous Goods

- 15.1 Should the supplier deliver legally permissible products, which are, however, subject to statutorily-imposed substance restrictions and/or information requirements (e.g. REACH, RoHS), supplier shall declare such substances in the web database BOMcheck (www.BOMcheck.net) or in a reasonable format provided by Flender BVBA/SPRL no later than the date of first delivery of the products. The foregoing shall only apply with respect to laws which are applicable at the registered seat of supplier or Flender BVBA/SPRL or at the designated place of delivery requested by Flender BVBA/SPRL.
- 15.2 Furthermore, the supplier shall declare all substances which are set out in the so-called "Siemens list of declarable Substances" applicable at the time of delivery in the manner described above.
- 15.3 Should the delivery contain goods which – according to international regulations – are classified as dangerous goods, the supplier will inform Flender BVBA/SPRL thereof in a form agreed upon between the supplier and Flender BVBA/SPRL, but in no case later than the date of Order Confirmation.

16. Export Control and Foreign Trade Data Regulations

- 16.1 The supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). The supplier shall advise Flender BVBA/SPRL in writing within two weeks of receipt of the order – and in case of any changes without undue delay – of any information and data required by Flender BVBA/SPRL to comply with all Foreign Trade Regulations in case of export and import as well as re-export, including without limitation:
- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN); and
 - the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; and
 - the country of origin (non-preferential origin); and – upon request of Flender BVBA/SPRL – supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).
- 16.2 The supplier shall be liable for any expenses and/or damages incurred by Flender BVBA/SPRL due to any breach of the obligations according to Art. 16.1.

17. CE marking

By accepting these conditions of purchase, the supplier confirms that the goods contain the obligatory CE marking by which the manufacturer indicates that the product is in conformity with the applicable requirements set out in European Community harmonisation legislation providing for its affixing. Any delivery of goods that do not contain a CE marking for any reason whatsoever is only allowed after the prior written approval of Flender BVBA/SPRL.

18. Languages

By accepting these conditions of purchase, the supplier confirms that the goods comply with the relevant national regulation(s) implementing directive 2006/42/EC on machinery, if applicable. For machinery placed on the market and/or put into service in Belgium, Flender BVBA/SPRL points out that, by law, any written information and warnings and any instructions (including assembly instructions, technical files, relevant technical documentation) should be accompanied by a translation in Dutch, French and German.

19. Mention as Reference Customer

Only upon prior written approval of Flender BVBA/SPRL, the supplier shall be allowed to mention Flender BVBA/SPRL as a reference customer and/or make reference to products or services which the supplier has developed during the performance of an order for Flender BVBA/SPRL.

20. Netting clause

Flender BVBA/SPRL is entitled to set off all eventual claims that it or any of the Affiliates might have against the supplier's claims.

21. Assignment of Claims and /or contract

Any assignment of any claim and/or contract is only allowed with the prior written approval of Flender BVBA/SPRL.

22. Reservation Clause

Flender BVBA/SPRL shall not be obligated to fulfill this contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

23. Place of Jurisdiction and Applicable Law

- 23.1 Any dispute concerning the entering into force, the validity, interpretation, execution, suspension, termination and enforcement of these Conditions of Purchase and any contracts or underlying agreements that are regulated by these conditions, shall be exclusively resolved by the competent courts of the legal district of Brussels.
- 23.2 Belgian substantive law shall apply to these Conditions of Purchase and any contracts or underlying agreements that are regulated by these conditions, excluding the provisions of the United Nations Convention of Vienna on the Sale of Goods of 11.4.1980.