

Conditions of Purchase

Dated: 01 March 2022

Definitions

"Customer" shall mean Flender.

"Supplier" shall mean any supplier to Flender in a supply relationship in respect of which these Conditions of Purchase have through written agreement, been made applicable.

1. Order and Confirmation of order

The Customer may cancel the order if the Supplier has not confirmed acceptance of the order (confirmation) in writing within 2 weeks of receipt.

- 1.1 If the terms of the confirmation vary from the terms of the order, the Customer is only bound thereby if it agrees to such variation in writing. In particular the Customer is bound by the General Terms and Conditions of the Supplier only to the extent that these are in accordance with the Customer's own Conditions of Purchase or if the Customer agrees to such in writing. The acceptance of deliveries or services as well as payments do not constitute such agreement.
- 1.2 Any amendments or additions to the order shall only be effective if the Customer confirms such in writing.

2. Rights of Use

- 2.1 The Supplier hereby grants the Customer 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 (hereinafter collectively referred to as "Software") in connection with the installation, launch, testing and operation of the Software;
 - 2.1.3 to sublicense the right of use under section 2.1.2 above to affiliates to other distributors and end customers;
 - 2.1.4 to license affiliates and other 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 other 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 other distributors.
- 2.2 In addition to the rights granted in section 2.1 above, the Customer, affiliates and other distributors are authorized to allow end customers to transfer Software licenses.
- 2.3 All sublicenses granted by the Customer must contain appropriate protection for the intellectual property rights of the Supplier in the Software. All sublicenses must contain any contractual provisions used by the Customer to protect its own intellectual property rights.
- 2.4 The Supplier is obliged to inform the Customer - 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" is software that is licensed royalty-free and which may be adapted by a user and/or licensee or third party and/or which must be disclosed in source code form.

Should the products and services delivered by the Supplier contain OPEN SOURCE SOFTWARE, the Supplier must deliver to the Customer 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 require 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 the Customer 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.

Should the Supplier not indicate until after receipt of the order that its products and services contain OPEN SOURCE SOFTWARE, then the Customer is entitled to cancel the order within 14 days of receipt of this information and provision of all the information contained in the above paragraph.

3. Terms and Penalty for Breach

- 3.1 For the purposes of establishing the timeliness of delivery or re-performance, the relevant point in time is the date of receipt at the place of receipt designated by the Customer, and for deliveries involving installation, commissioning or services, the relevant point in time shall be the date of acceptance.
- 3.2 Where any delay in delivery or performance can be anticipated, the Customer shall be notified immediately and its decision sought.
- 3.3 If - in the event of delay - the Supplier cannot prove that it is not responsible for the delay, the Customer may charge a penalty in respect of each commenced working day of delay amounting to 0.3% but not exceeding a total of 5% of the total value of the contract.

In the event that the appropriate reservation of rights is not made at the time of acceptance of delivery, services or re-performance, this penalty may be claimed up until the date of final payment.

4. Transfer of Risk, Dispatch and Place of Performance

- 4.1 For deliveries involving installation, commissioning or services, the transfer of risk occurs on acceptance and for deliveries not involving installation or commissioning, the transfer of risk shall be upon receipt by the Customer at the designated place of receipt.
- 4.2 Unless otherwise agreed, the costs of delivery and packaging shall be borne by the Supplier. For pricing ex works or ex warehouse of the Supplier, transport shall in each case be at the lowest possible cost, insofar as the Customer has not requested a particular method of delivery. Any supplementary costs arising from non-conformity with the transport requirements shall be borne by the Supplier. Where the price is quoted free to the recipient, the Customer may also 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 a packing note or delivery note with details of the contents as well as the complete order number. Notice of dispatch shall be provided immediately with the same information.

5. Invoices

The order number as well as the number of each individual item shall be detailed in invoices. Insofar as any such details are omitted, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

6. Payment

- 6.1 Unless otherwise agreed, payments are to be made within 60 days net.
- 6.2 The period for payment shall commence as soon as any delivery or service is completed and a correctly issued invoice is received. 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. A discount shall also be allowed if the Customer sets off or withholds any payments to a reasonable extent on account of any deficiency. The period for payment shall commence after the complete rectification of any deficiency.
- 6.3 Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with these Conditions of Purchase.

7. Inspection upon receipt

- 7.1 The Customer shall immediately upon receipt examine whether a delivery corresponds to the quantity and type of products ordered and whether there are any external recognizable transportation damage or other deficiencies.
- 7.2 Should the Customer discover any deficiency in the course of these inspections, it shall inform the Supplier of such deficiency. Should the Customer discover a deficiency at any later stage, it shall also notify the Supplier.
- 7.3 Complaints may be raised within one month of delivery of a product or performance, and insofar as deficiencies are not discovered until commissioning, processing or first use, within 1 month of detection.
- 7.4 In this regard the Customer shall have no other duties to the Supplier other than the duties of inspection and notification above.

8. Warranty

- 8.1 If deficiencies are identified before or during the transfer of risk or during the warranty period provided for in section 8.9 or 8.10, the Supplier must at its own expense and at the discretion of the Customer either rectify the deficiency or provide substitute or performance. This provision also applies to deliveries subject to inspection by sample tests. The discretion of the Customer shall be exercised fairly and reasonably.

- 8.2 Should the Supplier fail to rectify any deficiency within a reasonable time period set by the Customer, the Customer is entitled to:
- cancel the contract in whole or in part without being subject to any liability for damages; or
 - demand a reduction in price; or
 - undertake itself any rectification at the expense of the Supplier or substitute performance or arrange for such to be done; and
 - claim damages in lieu of performance.
- 8.3 Any rectification may take place without a further deadline at the expense of the Supplier if delivery is after the original deadline.
- 8.4 The same shall apply if the Customer has a strong particular interest in immediate rectification in order to avoid any liability of its own for delay or for other reasons of urgency and it is not reasonable for the Customer to request the Supplier to rectify the deficiency within a reasonable time period.
- 8.5 The above-mentioned rights shall expire 1 year from the date of notification of the deficiency but in no instance before the expiry of the warranty period set out in this section.
- 8.6 Additional or other statutory rights are not affected hereby.
- 8.7 If the Supplier provides substitute performance or repairs, the warranty periods set out in section 8.9 and 8.10 shall commence once again.
- 8.8 The Supplier shall bear the costs and risk related to the return of deficient products.
- 8.9 The warranty period for material deficiencies is 3 years, insofar as no statutory provisions provide longer periods.
- 8.10 The warranty period for deficiencies in title is 5 years, insofar as no statutory provisions provide longer periods.
- 8.11 The warranty period begins to run with the transfer of risk (see section 4.1). Upon delivery to locations where the Customer is operating outside its premises, the warranty period begins with the acceptance by the end customer, in no case later than one year after transfer of risk.
- 9. Duty to Verify Title/Duty to Inform**
- It is essential that the products are delivered free of any third party rights. Thus the Supplier is under a duty to verify title and inform the Customer of any possible conflicting industrial and intellectual property rights. Any breach of such duty is subject to the normal statutory limitation period.
- 10. Subcontracting to Third Parties**
- Subcontracting to third parties shall not take place without the prior written consent of the Customer and entitles the Customer to cancel the contract in whole or in part and claim damages.
- 11. Provided Material**
- 11.1 Material provided by the Customer remains the property of the Customer and is to be stored, labeled and administered separately. Their use is limited to the orders of the Customer only. The Supplier shall supply replacements in the event of reduction of value or loss, for which Supplier is responsible, even in the event of simple negligence. This also applies to the transfer of allocated material.
- 11.2 Any processing or transformation of the material shall take place for the Customer. The Customer shall immediately become owner of the new or transformed product. Should this be impossible for legal reasons, the Customer and Supplier hereby agree that the Customer shall be the owner of the new product at all times during the processing or transformation. The Supplier shall keep the new product safe for the Customer at no extra cost and in so doing exercise the duty of care of a merchant.
- 11.3 The Supplier shall, at the Supplier's own expense, promptly execute and deliver all such documents and take all necessary steps as the Customer may from time to time reasonably require for the purpose of giving full effect to the provisions of these Conditions of Purchase.
- 12. Tools, Patterns, Samples, Confidentiality etc.**
- 12.1 Any tools, patterns, samples, models, profiles, drawings, standard specification sheets, printing templates and materials provided by the Customer, as well as any materials derived there from, shall not be made available to any third party nor used for any other purpose than those contractually agreed except with the prior written consent of the Customer. Such materials shall be protected against unauthorized access or use. Subject to any further rights the Customer may demand that such materials be returned if the Supplier breaches these duties.
- 12.2 The Supplier shall not make available to any third party any information obtained from the Customer if such information is not already general knowledge or has not been lawfully obtained by the Supplier. Insofar as the Customer agrees to any subcontracting to a third party, such third party shall agree to such terms in writing.
- 13. Assignment of Claims**
- Any assignment of any claim is only allowed with the prior written approval of the Customer.
- 14. Inability to Pay / Insolvency of the Supplier**
- Should the Supplier cease to make payments, or if an interim insolvency administrator is appointed or if insolvency proceedings are commenced in relation to the assets of the Supplier, the Customer may withdraw from the contract in part or in whole or cancel the contract. In the event of cancellation the Customer may continue to utilize existing facilities, deliveries or services already performed by the Supplier in exchange for reasonable payment.

15. Supplementary Provisions

Insofar as the provisions of these Conditions of Purchase do not regulate certain matters, relevant statutory provisions shall apply.

16. Code of Conduct for Flender Suppliers

16.1 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 and occupational health and safety laws and will use best efforts to promote this Code of Conduct among its suppliers.

16.2 In addition to other rights and remedies the Customer may have, the Customer may terminate the contract and/or any purchase order issued thereunder in case of breach of these obligations by the Supplier. However, provided that Supplier's breach of contract is capable of remedy, the Customer'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 the Customer.

17. Broad-Based Black Economic Empowerment (B-BBEE)

17.1 The Supplier herewith agrees that, in the event that there is any change in the Supplier B-BBEE status, the Supplier will notify Flender in writing within [7] days of such change

17.2 The Supplier is required to provide an updated B-BBEE certificate reflecting the change referred to in 17.1, as verified by a SANAS accredited verification agency within 30 days of the notification contemplated under 17.1.

17.3 In the event that the Supplier B-BBEE rating has decreased from its former status, Flender will have the right to either terminate or renegotiate its agreement/purchase order in its entirety.

17.4 Should the Supplier fail to inform Flender of any change of its B-BBEE rating under this clause 17.1, Flender shall have the right to terminate its agreement/purchase order.

18. Export Control and Foreign Trade Data Regulations

18.1 The Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations"). The Supplier shall advise the Customer in writing within 2 weeks of receipt of the order – and in case of any changes without undue delay – of any information and data required by the Customer 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 the Customer – the Supplier's declaration of preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

18.2 The Supplier shall be liable for any expenses and/or damage incurred by the Customer due to any breach of the obligations according to 17.1, unless the Supplier is not responsible for such breach.

19. Place of Jurisdiction and Applicable Law

19.1 The Parties shall submit to the exclusive jurisdiction of the courts of the Republic of South Africa. The Parties agree that the Customer shall be entitled but not obliged to institute any action arising out of or flowing from these Conditions of Purchase in any Magistrate's Court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court.

19.2 Construction and interpretation of rights and obligations flowing from these Conditions of Purchase or arising out of breach thereof shall be in accordance with the law in the Republic of South Africa.

20. Foreign Currency Control

20.1 Should any portion of the purchase price contain amounts in respect of imported Goods which are subject to exchange rate variation then the Supplier shall declare such to the Customer at the time of submission of an offer or tender. To this end the Supplier shall furnish the following information:

- 20.1.1 the country of origin of the goods in question;
- 20.1.2 the actual FCA value of the goods (not expressed as a percentage of the purchase price);
- 20.1.3 the bank's selling rate of exchange on which the price is based.
- 20.2 the Customer reserves the right to pay either the Supplier's principal direct, bear the foreign currency risk on such amounts declared or request the Supplier to provide forward cover therefor.
- 20.3 It is an express condition, however, that should additional cost be incurred due to the Supplier defaulting in:
 - 20.3.1 the submission of foreign currency with its offer;
 - 20.3.2 in the timely provisioning of forwarded cover when requested to provide such;
 - 20.3.3 the timely submission of commercial invoices in the foreign currency; or

20.3.4 the delivery date. Then such additional cost shall be for the account of the Supplier.

21. Control Document

21.1 Where the Customer has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency, the Supplier shall within 1 month of the date of receipt of the goods at the port of entry into the Republic of South Africa, or other African country, as may be applicable in the context, provide the Customer's Commercial Manager with original:

21.1.1 customs stamped commercial invoices;

21.1.2 customs stamped bill of lading;

21.1.3 customs stamped bill of entry,

or other documents which may be required by the laws of the relevant African country.

21.2 In the event that the Supplier is unable to submit originals of the said documents to the Customer then the Supplier shall provide to the Customer, in a form approved by the Customer, an undertaking, signed by an official of the Supplier having authority to do so, guaranteeing that the Supplier will hold the original documents in its safe keeping and make them available for inspection by either the Purchaser or an official of the South African Reserve Bank or other relevant central controlling financial institution of such African country, as may be applicable in the context when required to do so. The said documents shall be retained by the Supplier for a period of not less than 2 years.

22. Supplier's Indemnity

Save as expressly otherwise provided, the Supplier shall be solely responsible for all loss, damage or injury which may be sustained by the Customer or by any other person, firm or corporation as a result of or by reason of its execution of any work or supply under an agreement subject to these Conditions of Purchase and agrees without reservation to hold harmless and fully indemnify the Customer and its officers, servants and agents against all actions, proceedings, claims and demands whatsoever which may be brought or made against them or any of them as a result of or arising out of the execution of the work or supply of goods and agrees to accept and bear all costs which may reasonably be incurred in connection with such actions, proceedings, claims and demands.

23. Reservation Clause

The Customer's obligation to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

24. Data Privacy

During the course of the relationship between the parties, the Supplier shall disclose certain personal data (i.e. data which shall include, but not be limited to, all data which can be used to identify a person or a company) to the Customer ("Personal Data"). The Personal Data shall be used solely for the purposes of the Supplier supplying the Customer with products and/or services. The Personal Data may be disclosed to employees of Flender or to an associated or subsidiary company of Flender for a reasonable and lawful purpose. The Personal Data may be disclosed to Flender AG or another associated or subsidiary company of Flender or Flender AG for a reasonable purpose. The Supplier consents to such transfer of information.

Further information on the Flender Data Privacy Policies may be accessed at the following link: <https://www.flender.com/en/PrivacyPolicy>.

25. Security Vetting

25.1 The Supplier acknowledges that the Supplier shall be responsible for the security vetting of subcontractors, its own staff and/or employees to the satisfaction of the Customer and that non-compliance herewith will constitute a material breach of the Supplier's obligations under this agreement.

25.2 The Supplier acknowledges that the Customer may at any time, at its sole discretion, request the Supplier to provide proof of compliance with the security vetting requirements. If and to the extent that the Supplier cannot demonstrate such compliance, the Customer reserves the rights to at its sole discretion: instruct the removal of any subcontractor, staff and/or employees of the Supplier from the Customer's premises or any other locations where the Customer operates; and/or suspend the Supplier's supply of all goods and/or services, at the Supplier's cost, until such time that the Supplier can demonstrate such compliance.

26. Export Control & Customs

26.1 Article X – Export Control and Foreign Trade Data Regulations

X.1 For all Products to be delivered and Services to be provided according to this Agreement Supplier shall comply with all applicable export control, customs and foreign trade regulations ("Foreign Trade Regulations") and shall obtain all necessary export licenses, unless Buyer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Foreign Trade Regulations.

X.2 Supplier shall advise Buyer in writing as early as possible but not later than [weeks/days prior to] the Delivery Date of any information and data required by Buyer to comply with all Foreign Trade Regulations for the Products and Services applicable in the countries of export and import as well as re-export in case of resale. In any case Supplier shall provide Buyer for each Product and Service:

- the "Export Control Classification Number" according to the U.S. Commerce Control List (ECCN) if the Product is subject to the U.S. Export Administration Regulations; and

- all applicable export list numbers; 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 Buyer: Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers)

(„Export Control and Foreign Trade Data“)

X.3 In case of any alterations to origin and/or characteristics of the Products and Services and/or to the applicable Foreign Trade Regulations Supplier shall update the Export Control and Foreign Trade Data as early as possible but not later than [weeks/days prior to] the Delivery Date. Supplier shall be liable for any expenses and/or damage incurred by Buyer due to the lack of or inaccuracy of said Export Control and Foreign Trade Data.

27. Export Control Declaration To Customers

27.1 "We hereby certify that Flender has taken all the measures necessary to comply with the relevant provisions of German, European and U.S. American (re-) export control laws and has established the required processes. These also cover any person-related and country-related embargo regulations based on statutory provisions and applicable to Flender.

27.2 All the substantial legal requirements and any internal restrictions above and beyond these are substantiated in the Internal Control Program Export Control (ICP).

27.3 Every order continues to be checked against the criteria of the applicable lists of goods and against the final disposition and designated purpose of the goods, independent of the country of destination. If required, appropriate licenses are obtained prior to supply and any legal prohibitions or other legal restrictions applying to Flender are strictly observed.

27.4 This declaration applies to the whole of Flender and we ask you not to make any further individual enquiries at the different company locations."