

# General purchasing Terms and Conditions



## 1. Scope of application

- 1.1. The following Q-Drives Purchasing Terms and Conditions are decisive in relation to all present and future enquiries, orders, purchases and other legal transactions and services. The Supplier expressly acknowledges that Q-Drives already rejects any deviating provisions contained in order confirmations and other business documents of the Supplier. Deviating conditions of the Supplier and agreements that deviate from these Purchasing Terms and Conditions are only valid when they have been agreed explicitly in writing. Acceptance and payment of goods or services from the Supplier does not imply acceptance of the Supplier's terms and conditions of business.
- 1.2. These Purchasing Terms and Conditions are also deemed to represent a general agreement for all further legal transactions with the Supplier. If an E-commerce Agreement exists, these Purchasing Terms and Conditions act as a supplement to the E-commerce Agreement.
- 1.3. The following order applies in the event of contradictions in the contractual basis: a) Special agreements (e.g. Supply Contract, Quality Assurance Agreement, etc.), insofar as Q-Drives has confirmed these in writing<sup>[1]</sup>; b) these Q-Drives General Purchasing Terms and Conditions<sup>[1]</sup>; c) Dispositive norms of commercial and civil law

## 2. Offer, quotation, order

- 2.1. Offer: In its offer, the Supplier is to adhere strictly to the specification in the invitation to tender/enquiry in terms of the quantity and quality of the goods to be delivered, and in the event of deviations, is to expressly point this out in writing in advance. In the event of deviations, the Supplier has no claim to a higher fee if he fails to submit said written notice. All offers submitted by the Supplier are binding and free of charge.
- 2.2. Purchase orders/orders: Only purchase orders/orders made in writing (also by fax and email) are valid. Verbal agreements or agreements made by telephone need to be confirmed in writing in order to be binding for Q-Drives. Deviations from the purchase order in the order confirmation submitted by Supplier have no effect on the original purchase order.

## 3. Prices

- 3.1. The prices agreed include packaging, customs, insurance and other transport costs or shipping costs including costs for a transport permit. All prices are fixed prices in euros (€). Prices cannot be increased for any reason whatsoever.

- 3.2. The terms of payment are 30 days with a 3% cash discount or net 60 days following receipt of the invoice.

## 4. Invoice and payment

- 4.1. Invoices need to comply with the statutory provisions, and, in particular, the Austrian Value Added Tax Act ("Umsatzsteuergesetz"), and any separate agreements made; they are not allowed to be enclosed in delivery and should be sent to Q-Drives immediately after shipment. Invoices should always contain the full order number and the purchase order/order date. The Supplier is liable for any additional or consequential costs that arise owing to incorrect or incomplete invoicing.
- 4.2. Payment periods begin on the date of invoice receipt. Payment in no way constitutes acknowledgement of the correctness of the delivery or the waiver of any claims. The Supplier is prohibited from assigning claims against Q-Drives to third parties.

## 5. Delivery, delivery period, delivery deadlines

- 5.1. All deliveries are made in accordance with Incoterms 2022: DDP Q-Drives GmbH, Mühlenstrasse 3, 4470 Enns, unless another specific destination is specified in the invitation to tender/on the order form.
- 5.2. The delivery is to be made on the date and in the quantity specified on the order/purchase order. Decisive for compliance with the delivery date or deadline is our receipt of the goods at the stated point of receipt or use, or punctual and successful acceptance. Acceptance of goods that are delivered late is always subject to any possible claims.
- 5.3. If a delay in delivery occurs, the Supplier is obliged to notify Q-Drives immediately in writing. In the event of a delay in delivery, Q-Drives is entitled to a contractual penalty of 3%, whereby a max. 10% of the value of the order can be deducted per day. In the event of default by the Supplier, Q-Drives is in any case free to withdraw from the contract without setting a period of grace, whereby the Supplier is not entitled to make any claims against Q-Drives. Q-Drives is entitled to withdraw from the 5th day after the Supplier goes into default. Other claims to compensation that extend beyond the contractual penalty for all damages caused by the delay in delivery and adverse consequences of any kind remain unaffected.  
An immediate caveat on the contractual penalty on acceptance is not necessary, but a claim can still be made on this up to the point of final payment, with a deduction from the final invoice still being possible. Contractual penalties for missed

milestone deadlines can be deducted from partial payments.

- 5.4. The Supplier can only invoke the absence of the requisite documents to be supplied by Q-Drives if he has requested the transfer of the documents in writing and did not receive them immediately; in this case, no delay in delivery occurs as long as Q-Drives is in default with submitting the documents. The burden of proof here lies with the Supplier.
- 5.5. Delivery delays caused by force majeure are not considered delays; in such cases, Q-Drives is entitled to either withdraw from the contract or postpone the delivery date to a later date, without the Supplier being entitled to any claims against Q-Drives. Incidents of force majeure shall exclusively be: War, riot, forces of nature, fire, union-approved strike.

## 6. Shipping

- 6.1. A delivery note is to be sent with each consignment. The Supplier is liable for all damages, costs, penalties etc., caused by failing to comply with this provision. The delivery will be not accepted if the corresponding shipping documents are not sent with the consignment, but will be postponed at the expense and the risk of the Supplier. The Supplier bears responsibility for failing to comply with instructions of this kind.
- 6.2. Partial deliveries are only permitted if agreed in writing, otherwise Q-Drives is allowed to refuse acceptance. In any case, partial deliveries are not regarded as independent transactions and need to be identified in writing, stating the total quantity and quantity contained in the partial delivery.

## 7. Order documentation

- 7.1. All information, drawings and other technical documentation provided by Q-Drives to the Supplier for manufacturing the delivery item, or which the Supplier has made in accordance with the specifications of Q-Drives is not to be used by the Supplier for any purpose other than production order based on the subject matter of the order, or duplicated or made accessible to third parties. The aforementioned documents remain the sole property of Q-Drives and must be returned to Q-Drives without delay upon request, including any copies and duplications. If delivery becomes impossible for whatever reason, the Supplier is to return all the documents to Q-Drives immediately without request. The purchase orders and related work are to be considered business secrets and treated confidentially. The Supplier is liable for all damages incurred by Q-Drives that arise from the breach of any of these obligations.

## 8. Project Progress

- 8.1. On working days, during normal working, Q-Drives and the end customer are free to carry out discretionary checks on the progress and quality of the contractual service at the site or premises of the Supplier and/or contractors contracted by the Supplier.

## 9. Transfer of risk

- 9.1. In deviation from any Incoterms 2022 applied, transfer of hazard and risk takes place on delivery of the goods at the specified destination.

## 10. Liability

- 10.1. The liability of the Supplier is governed by the statutory provisions; liability for lost profits is excluded.

## 11. Guarantee

- 11.1. The Supplier assumes full warranty for the purchase order or delivery schedule-compliant, complete and flawless execution of the delivery and scope of service, in particular for the generally expected and, in any case, assured properties mentioned in public statements, according to samples or patterns, and for compliance of the deliveries and/or misc. services with all applicable and valid legal and regulatory requirements at the specified destination and/or the markets specified by Q-Drives. The Supplier is to provably notify Q-Drives of all risks usually associated with the scope of delivery and service. In the same way, the Supplier is liable for the goods and components which he delivers, but does not produce, or for services rendered.
- 11.2. The warranty ends after the warranty for the entire system in which the Supplier's goods or services are incorporated, but at the earliest 36 months after acceptance of the delivery or service (or 24 months after commissioning). This does not precipitate any change to indemnification periods.
- 11.3. Q-Drives is not obliged to inspect the goods or complain about any defects (including errors in quantity; the validity of Sec. 377 and 378 Austrian Commercial Code (UGB) is hereby expressly waived.
- 11.4. At its discretion, Q-Drives is entitled to request in the short term that the Supplier undertake remedial action at its own cost and risk by improving and/or replacing (repair, subsequent supply of missing items) the goods, or to return the goods at the Supplier's expense and withdraw from the contract.
- 11.5. In the event of a claim on title from the warranty, the Supplier bears the burden of proof during the entire warranty period that the defect was not present on delivery.
- 11.6. The Supplier also assumes a warranty for hidden defects.
- 11.7. In the event of defects of any kind whatsoever, Q-Drives is entitled to retain the entire outstanding purchase price or fee until the defect is remedied in full.

## 12. Product liability

- 12.1. The Supplier is to enclose instructions for use and warnings in German and English and, if possible and reasonable, actually attach them to the delivered goods. If, following acceptance of the delivery by Q-Drives, the goods delivered prove to be defective in terms of Sec. 5 Austrian Product

Liability Act (PHG), and/or it is recognised that the properties and features of the product no longer correspond to the current state of scientific knowledge and the state-of-the-art in terms of Sec 8 (Z) (2) PHG, the Supplier undertakes to accept the return of these goods and ensures the prompt replacement of the defective product.

- 12.2. If claims are made against Q-Drives for goods/services supplied by the Supplier, the Supplier undertakes to hand over any evidence required by Q-Drives immediately, in particular, quality and inspection records, certificates and similar.
- 12.3. The Supplier undertakes to take out corresponding commercial liability insurance, whereby Q-Drives reserves the right to request that the supplier provide evidence of such cover. If the Supplier fails to comply with such a request within 14 days, Q-Drives is entitled to withdraw from the contract and demand compensation.

### **13. Spare parts**

- 13.1. The Supplier guarantees the supply of replacement or compatible parts for a period of at least 15 years.

### **14. Third-party property rights**

- 14.1. The Supplier warrants that the contractual use of the delivery items or other services does not breach the property rights of third-parties (patents, trademarks, designs, copyrights, equipment, product names, know-how, territory protection, or rights of a similar nature, even if a registered claim to them has just been made). Q-Drives is not obliged to check whether immaterial rights apply to the goods or whether they are being breached, but is entitled to assume that all the rights required for the proper fulfilment of the contract are due to the Supplier vis-a-vis third parties. The Supplier shall indemnify and hold Q-Drives harmless against any claims made by third parties in this regard.
- 14.2. Without prejudice to further rights, Q-Drives is entitled to refuse acceptance of the goods in such a case until the validity of the claims asserted have been clarified, to return already accepted goods to the Supplier at the expense of the Supplier and withhold payment of the complete purchase price.

### **15. Avoidance of contract**

- 15.1. Q-Drives is entitled to withdraw from the contract in whole or part in the event of a delay in delivery, breach of essential contractual obligations, bankruptcy of the Supplier or bankruptcy owing to lack of assets, suspension of payments and events of force majeure. No claims of any kind by the Supplier against Q-Drives arise from a withdrawal of this kind. The Supplier is obliged to notify Q-Drives immediately in writing of any such circumstances.

### **16. Confidentiality**

- 16.1. The Supplier may have access to specific classified and confidential information belonging to Q-Drives and its customers. The Supplier therefore agrees

hereby to treat such information as confidential and refrain from using or disclosing it to third parties except within the scope of fulfilling this agreement. All pre-existing confidentiality agreements between Q-Drives and the Supplier still retain their validity. The Supplier agrees to compensate Q-Drives for all damages and costs arising from the breach of its confidentiality obligations.

### **17. Minimum wage regulations**

- 17.1. If the Supplier performs services in countries where minimum wage regulations apply which apply to his services, he undertakes to comply with these regulations. The Supplier guarantees to consistently pay the minimum wage on time. If the Supplier uses a subcontractor to fulfil his contractual obligations, he is obliged to oblige him to comply with the minimum wage regulations as well. The Supplier indemnifies Q-Drives at the first request against all claims, fines, penalties and costs that result from claims made against Q-Drives arising from the pertinent regulations.

### **18. Non-solicitation clause**

- 18.1. The Supplier is prohibited from directly or indirectly soliciting Q-Drives employees without prior written permission or offering them employment (both referred to in the following as "soliciting").
- 18.2. If the Supplier fails to comply with the aforementioned provision, he shall pay a contractual penalty that corresponds to the gross annual remuneration (calculated in line with severance indemnity acc. to Sec. 23 Austrian Employees Act (AngG)) that Q-Drives paid to the employee solicited by the Supplier in his final year of employment; extrapolated gross annual remuneration applies in the case of a contract of shorter duration.
- 18.3. The contractual penalty is explicitly recognised as reasonable and is therefore not subject to the judicial right to reduce or abate. Further claims by Q-Drives for compensation for actual damage caused by soliciting the employee will be maintained, but the penalty will be added to the total compensation.

### **19. Advertising**

- 19.1. Any kind of publication, referencing and advertising by the Supplier that use deliveries and services and the business relationship as a vehicle require the written consent of Q-Drives. Advertising emblems or logos/company signs attached to the scope of delivery and services require the written approval of Q-Drives. Type plates are excluded from this.

### **20. Customer Protection**

- 20.1. The Supplier undertakes to perform all business transactions that relate to the end customer and the subject matter of this contract via Q-Drives exclusively. This also applies to all expansion, replacement and wear part deliveries and maintenance and service activities performed by the Supplier.

## 21. Conformity

- 21.1. The Supplier guarantees that all the products that he delivers comply with the recognised rules of technology (e.g. Austrian standard and EN standards for technical content), the relevant statutory and official regulations, the implementing provisions and respectively applicable EU regulations and their possible implementation in national law, and, in particular, the provisions of (EC) Regulation No. 1907/2006 ("REACH") and its annexes, and Directive 2011/65/EU and 2002/95/EC (RoHS).
- 21.2. In addition, the Supplier ensures that this obligation is transferred to his supply chain and shall prove this accordingly at the request of Q-Drives.

## 22. Place of fulfilment, choice of law and jurisdiction

- 22.1. Unless otherwise stipulated in the invitation to tender/on the purchase order form, the respective delivery address of both Parties represents the place of performance for all rights and obligations resulting from legal transactions concluded with Q-Drives.
- 22.2. Exclusive jurisdiction for the Supplier for all disputes arising out of or in connection with the present contractual relationship is the court with jurisdiction at the registered office of Q-Drives.
- 22.3. This agreement is subject to substantive Austrian law exclusively. The conflict of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) are expressly excluded.

## 23. Final provisions

- 23.1. If individual provisions of these Q-Drives Purchasing Terms and Condition are or become wholly or partially ineffective, it does not affect the validity of these Purchasing Terms and Conditions as a whole. This also applies to gaps in the agreement. The ineffective provision will be replaced by a different and effective provision which comes closest to the content and purpose of the ineffective provision.
- 23.2. The headings for the provisions contained in these Q-Drives Purchasing Terms and Conditions are meant for convenience only and cannot be relied upon for interpretation.
- 23.3. No executive business between the Supplier and Q-Drives and no delay or failure with regard to exercising a right, remedy or appeal in accordance with these Q-Drives Purchasing Terms and Conditions constitute a waiver of these rights. Each of the rights and remedies granted in these Purchasing Terms and Conditions, or any remedy granted in these Purchasing Terms and Conditions is cumulative and is equal, subsidiary and additional to other legally granted rights, remedies and appeals.