

# XYLEM EMEIA GENERAL CONDITIONS for the sale and supply of products

## 1. APPLICATION

Except as otherwise expressly agreed in writing, these conditions ("General Conditions") shall exclusively apply to all deliveries and services of XYLEM Analytics Germany Sales GmbH & Co. KG (in the following: Contract). Deviating conditions of the Purchaser shall not apply.

## 2. MINIMUM NET ORDER VALUE, VALIDITY OF QUOTATIONS, CUSTOM MADE PRODUCTS, EXCESS DELIVERIES AND CANCELLATION OF ORDERS, TRANSFER OF RISK

2.1 The minimum net order value amounts to EUR 100. For orders below this amount Supplier reserves the right to charge handling costs of EUR 20.

2.2 Quotations are valid for thirty (30) calendar days from the date of issuance unless otherwise agreed in writing by Supplier, subject to prior sale. Supplier reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by the Purchaser. Supplier nevertheless reserves its right to accept any contractual documents received from the Purchaser after this 30-day period.

2.3 The price for custom made products shall be separately agreed between the Parties.

2.4 Supplier shall have the right to deliver an excess quantity of up to 10% that has to be paid by Purchaser.

2.5 If the Purchaser fully or partly cancels an order for non-custom made products without justification Supplier shall be entitled, notwithstanding the right to assert a higher damage that has actually been incurred due to the cancellation, to demand 10% of the sales price for the cancelled order volume as compensation for the processing and minimum loss of profits unless Purchaser establishes proof of a lower damage. The cancellation or amendment of an order for custom made products shall not be possible.

## 3. PRODUCT INFORMATION

All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

## 4. DRAWINGS AND DESCRIPTIONS

4.1 All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

4.2 Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

4.3 Supplier shall, not later than at the date of delivery of Products, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## 5. INSPECTIONS AND TESTS

### 5.1 Inspections

5.1.1 If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Product, both during manufacture and when completed, inspected and checked by its authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with Supplier as to date and time, and at the Purchaser's expense.

### 5.2 Tests

5.2.1 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

5.2.2 If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with the Supplier's standard practice.

5.2.3 If the Purchaser in due time has requested in writing, Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate. With regard to standard products (as defined by Supplier from time to time) only a "production card" will be delivered with the Product stating that the Product has passed the test procedure and thereby is approved. If requested by the Purchaser in writing and prior to the performance of the test, a test report will be sent to the Purchaser at an additional cost reasonably determined by Supplier.

5.2.4 If the acceptance tests show the Product not to be in accordance with the Contract, Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency in Supplier's sole opinion was insignificant.

5.2.5 Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all costs and expenses for its representatives in connection with such tests. The Purchaser shall bear all costs for any optional tests requested by the Purchaser.

## 6. DELIVERY, PASSING OF RISK

6.1 Any agreed trade term shall be construed in accordance with INCOTERMS 2010. If no trade term is specifically agreed, the delivery ("Delivery") shall be DAP, Purchaser's address as set out in the Purchaser's purchase order accepted by Supplier. However, Supplier's costs for DAP delivery shall be paid by Purchaser as set out in Clause 9.6 below.

6.2 Partial shipments shall be permitted unless otherwise agreed.

## 7. TIME FOR DELIVERY

### 7.1 Time for Delivery

If the Parties, instead of specifying the date for Delivery, have specified a period of time on the expiry of which Delivery shall take place, such period shall start to run as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

### 7.2 Delay on part of Supplier

7.2.1 Any time periods specified by Supplier in the Contract for Delivery are to be treated as estimates whilst the Supplier shall make reasonable efforts to deliver on time. If Supplier anticipates that it will not be able to deliver the Product at the time for Delivery ("Delay"), Supplier shall inform the Purchaser thereof and, if possible, the time when Delivery can be expected.

7.2.2 If Delay is caused by any of the circumstances mentioned in Clause 14 or by an act or omission on the part of the Purchaser, including suspension under Clauses 9.4 or 14, the time for Delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the Delay occurs before or after the agreed time for Delivery.

7.2.3 In case of Delay, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than ninety (90) days from the Supplier's receipt of such demand. If Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible or a Delay covered by Clauses 7.3 or 14, then the Purchaser may by notice in writing to Supplier terminate the Contract in respect of such part of the Product that cannot, in consequence of Supplier's failure to deliver, be used as intended by the Parties. **THE PURCHASER SHALL IN NO EVENT BE ENTITLED TO ANY LIQUIDATED DAMAGES IN THE CASE OF DELAY.**

7.2.4 If the Purchaser terminates the Contract due to Delay, it shall be entitled to compensation for the loss it has suffered as a result of Supplier's Delay. The total compensation shall not exceed, except in cases of intent or gross negligence, 10 percent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

### 7.3 Delay on part of the Purchaser

7.3.1 If the Purchaser anticipates that it will be unable to accept Delivery of the Product at the Delivery time, it shall forthwith notify Supplier in writing thereof, stating the reason and, if possible, the time when it will be able to accept Delivery.

7.3.2 If the Purchaser for any reason fails to accept Delivery at the Delivery time, it shall nevertheless pay any part of the purchase price which becomes due on Delivery, as if Delivery had taken place. Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. Any other direct and/or financial costs incurred as a result of such failure to accept Delivery shall be borne by the Purchaser. Supplier shall, if the Purchaser so requires in writing, insure the Product on behalf of the Purchaser and at the Purchaser's expense.

7.3.3 Unless the Purchaser's failure to accept Delivery is due to any such circumstance as mentioned in Clause 14, Supplier may by notice in writing require the Purchaser to accept Delivery within a final reasonable period.

7.3.4 If, for any reason for which Supplier is not responsible, the Purchaser fails to accept Delivery within such period, Supplier may by notice in writing terminate the Contract in whole or in part. Supplier shall then be entitled to compensation for the loss it has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is

attributable to that part of the Product in respect of which the Contract is terminated.

## **8. ALTERATIONS AND CANCELLATION**

8.1 If the Purchaser requests an alteration of the Contract, and Supplier accepts such alteration (which acceptance shall not be unreasonably withheld), the alteration will be deemed as a new Contract entitling Supplier to a restart of the Delivery time which will start to run on the date of the approval in writing by Supplier of the alteration.

8.2 All additional costs incurred as a result of the alteration will be charged to the Purchaser, in addition to the purchase price.

8.3 If the Purchaser cancels the Contract in whole or in part without cause, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of cancellation, and (ii) any additional costs and expenses incurred as a result of the cancellation.

## **9. PRICES AND PAYMENT**

9.1 The purchase price shall be the price for such Products set out in Supplier's price list as of the date for Delivery if not specifically set forth in the Contract. For domestic sales, payments shall be made within 30 days of the date of the invoice in the currency stipulated in the Contract, unless otherwise agreed in writing. For export sales, full payment in advance by telegraphic transfer is required in the currency stipulated in the Contract, unless otherwise agreed in writing.

9.2 Whatever the means of payment used, payment shall not be deemed to have been effected until Supplier's account has been fully and irrevocably credited.

9.3 If the Purchaser fails to pay by the stipulated date, Supplier shall be entitled to interest from the day on which payment was due. The statutory law interest rates shall apply.

9.4 In case of late payment, Supplier may suspend its performance of the Contract until payment is received.

9.5 Notwithstanding other rights to terminate the Contract under other clauses in these General Conditions, the Supplier shall, if the Purchaser has not paid the amount due within three (3) months, be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss it has incurred.

9.6 Unless otherwise agreed to in writing, all prices are FCA Supplier's plant, and do not, even if Delivery is DAP in accordance with Clause 6.1 above, include transportation costs or charges relating to transportation. This means that in addition to the Product price, Purchaser shall compensate Supplier for all its transportation costs and charges, as set out in invoice from Supplier to Purchaser, despite that DAP delivery applies and such costs and charges shall thus be solely the responsibility of the Purchaser. Prices exclude special packing unless otherwise agreed to by Supplier in writing. All costs and taxes for packing shall be paid by the Purchaser as an additional charge. Such costs and charges are subject to change without notice.

9.7 The price for the Products does not include any applicable sales, use, excise, GST, VAT, or similar tax. The Purchaser shall have the responsibility for the payment of such taxes if applicable.

9.8 If, during the performance of the Contract, the financial condition of the Purchaser is such that Supplier in good faith and in application of usual banking standards deems a payment in time insecure, or if a material change in the ownership of the Purchaser occurs, or if the Purchaser fails to make any payments in accordance with the terms of its Contract with Supplier, then, in any such event, Supplier is not obligated to continue performance under the Contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance.

9.9 If the Purchaser fails to make payments or fails to furnish security satisfactory to Supplier, then Supplier shall have the right to enforce payment to the full Contract price of the work completed and in process.

9.10 Upon default by the Purchaser in payment when due, the Purchaser shall immediately pay to Supplier the entire unpaid amounts for any and all shipments made to the Purchaser irrespective of the terms of said shipment and whether said shipments are made pursuant to this Contract or any other contract of sale between Supplier or any of its affiliates and the Purchaser, and Supplier may withhold all subsequent shipments until the full amount is settled. Acceptance by Supplier of less than full payment shall not be a waiver of any of its rights hereunder.

## **10. WARRANTY, PURCHASER'S DUTIES IN WARRANTY CASES, REIMBURSEMENT OF EXPENSES, LIABILITY**

10.1 Purchaser's warranty claims depend on his proper compliance with his statutory duties of examination and notification. Notifications have to include specific information on the alleged defect and shall be in writing. Notifications based on incomplete delivery or other obvious defects shall be notified to Supplier in writing without delay, but at the latest within 10 working days of the

delivery arriving at its destination. Claims of Purchaser on account of a defectiveness or incompleteness are excluded if Purchaser fails to comply with this obligation.

10.2 In the case of product defects Supplier can elect to remove the defects or to provide a defect-free replacement. Only if this repeatedly fails or is unreasonable and the defect is not only insubstantial Purchaser is entitled to rescission or reduction of the purchase price in accordance with the statutory provisions. Sec. 445a BGB remains unaffected. Purchaser is entitled to claims for damages in accordance with Clause 10.5.

10.3 Concerning any replacement of products or removal of defects a warranty period of 3 months since delivery respectively the execution of service applies which runs, however, at least until the expiry of the warranty period of the original service (see Clause 10.7).

10.4 Purchaser has to inform Supplier immediately about each indication of product defects by his clients concerning Supplier's services. Should Purchaser not fulfil this obligation his claims for product defects against Supplier shall expire. Moreover, Purchaser has to safeguard proofs in adequate manner and to give Supplier the opportunity of examination at his request.

10.5 Supplier is liable without restriction under the Product Liability Act, in the event of an express assumption of a warranty or of a procurement risk or in the event of willful or grossly negligent violations of a duty. Supplier is also liable without restriction in the event of willful or negligent injury to life, physical well-being or health. In the event of Supplier's negligence (other than gross negligence) resulting in property or pecuniary damage, Supplier shall only be liable for a breach of essential contractual duties the fulfillment of which is inevitable for the proper performance of the contract and Purchaser can particularly rely on, however, limited to characteristic damages that were foreseeable at the time of signature.

10.6 No warranty is given for damages of all kind caused by improper treatment, change, installation and/or operation of the delivered product or by incorrect advice or instruction by Purchaser unless Supplier has caused those damages at least negligently.

10.7 Defect claims shall become time-barred after 12 months as of the statutory commencement of the limitation period. The same applies to legal defects. In the event of willful or grossly negligent breaches of a duty, claims arising from tortious acts, the absence of a warranted quality, the assumption of procurement risks or personal injury, the statutory time periods apply. Secs. 438 para. 3, 445b and 634a para. 3 BGB remain unaffected.

10.8 A further-reaching liability for damages than that provided in the paragraphs of this Clause 10. is excluded - without regard to the legal nature of the asserted claim.

10.9 The aforementioned restrictions of liability also apply, in terms of the reason and amount, in favour of Supplier's statutory representatives, employees and other vicarious agents.

## **11. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

11.1 Supplier shall not be liable for any damage to property or the environment caused by the Product after it has been delivered to the Purchaser. Nor shall Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

11.2 The Purchaser shall indemnify, defend and hold Supplier harmless to the extent that the Supplier incurs liability towards any third party in respect of loss or damage for which the Supplier is not liable according to the preceding paragraph.

11.3 If a claim for damages as described in this Clause 12 is lodged by a third party against one of the Parties, the latter party shall forthwith inform the other party thereof in writing.

11.4 Supplier and Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

## **12. CONFIDENTIALITY**

The Parties agree that any information received from the other party in connection with the Contract that evidently or by its nature should reasonably be understood to be confidential, shall not be disclosed by the recipient to any third party without the prior written approval of the disclosing party, except to the extent (i) this is necessary for the receiving party to exercise rights and perform duties pursuant to the Contract, (ii) the information is available to the general public or later becomes publicly available other than through a breach of the Contract, (iii) the information is actually known to the receiving party on the date that such information is disclosed as evidenced by written records in existence prior to the date of the receipt, (iv) the information is subsequently lawfully obtained by the receiving party from a third party or third parties, or (v) the information is independently developed by the receiving party prior to the disclosure.

### **13. FORCE MAJEURE**

13.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as pandemic, fire, earthquake, natural disaster, acts of God, war, extensive military mobilization, insurrection, requisition, seizure, embargo, acts of governments, strikes, lockouts, restrictions in the use of power and defects or delays in deliveries by sub-contractors ("Force Majeure").

13.2 The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

13.3 If Force Majeure prevents the Purchaser from fulfilling its obligations, it shall compensate Supplier for expenses incurred in securing and protecting the Product.

13.4 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under this Clause 14 for more than six (6) months.

13.5 If the Purchaser terminates the Contract due to Force Majeure, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of the termination and (ii) any additional costs and expenses incurred as a result of the termination.

### **14. ASSIGNMENT**

The Purchaser shall not assign or transfer this Contract or any interest in it, or monies payable under it, without the prior written consent of Supplier and any assignment made without such consent shall be null and void. Supplier may assign its rights and/or delegate its duties in whole or in part to any affiliated company. Supplier shall notify Purchaser of any such assignment or delegation.

### **15. INVALIDITY**

If any provision of this Contract is held to be illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be of no force and effect, but the illegality, invalidity, or unenforceability will have no effect upon

and will not impair the enforceability of any other provision of this Contract. The illegal, invalid or unenforceable provision shall be deemed to be substituted by a suitable provision which, to the extent legally permissible, comes as close as possible to the intent and purpose of the illegal, invalid or unenforceable provision. The same shall apply if the parties have unintentionally failed to address a certain matter in this Contract.

### **16. EXPORT REGULATIONS**

The Purchaser has to comply with all legal provisions and administrative requirements as well as all other applicable laws, and in particular export regulations and the laws of the country in which the Purchaser operates. The Purchaser has to obtain all necessary approvals and licenses as well as all necessary permissions in good time, which are, according to all these applicable laws, required for the use or the export of the delivery item.

The Supplier is entitled to withhold his goods and services vis-à-vis the Purchaser if the Purchaser would violate those applicable laws or if not all necessary permissions are available and if this is not based on the Supplier's fault or responsibility.

The performance of the contract on the part of the Supplier is on condition that there are no opposing impediments due to national or international foreign trade legislation as well as embargos (and/or other sanctions).

The US Export Administration Regulations (EAR) are equally to be respected. Rights and duties of the Purchaser according to this clause endure after the expiration and premature termination of this Contract.

### **17. PLACE OF PERFORMANCE**

Place of performance shall be the Supplier's place of business.

### **18. DISPUTES AND APPLICABLE LAW**

18.1 All disputes arising out of or in connection with the Contract shall be finally settled by the competent courts of Weilheim, Germany, yet it is in the discretion of the Supplier to initiate court proceedings also at the Purchaser's place of business or, in disputes regarding bills of exchange, at the place of payment of the bills of exchange.

18.2 The Contract shall be governed by the substantive law of Germany, excluding the application of the Convention on International Sales of Goods (CISG).