

# Purchasing Conditions for IT Services

## As at: 01.04.2019

### **1. Scope**

- 1.1 The following purchasing conditions shall apply to the purchase of IT services of Deutsche INEOS Solvents Germany GmbH (the Client) and/or its associated Companies within the meaning of § 15 AktG. (Joint Stock Companies Law) together with its subsidiary companies.
- 1.2 Any deviating sales or delivery conditions or modifications to these conditions on the part of the Supplier will only become a constituent part of the contract if the Client acknowledges these expressly in writing. Unless agreed otherwise, the Supplier has to provide the Client with all services corresponding to his ISO 9001 certification.
- 1.3 The following shall become constituent parts of the order and in the event of inconsistencies shall apply with subsequent ranking after this in the following order:
  - 1.3.1 The provisions of the letter conveying the order together with the description of the service (specifications) including any additional preliminary technical remarks plus the associated drawings and if applicable the record of the proceedings.
  - 1.3.2 The "Purchasing conditions for IT services"
  - 1.3.3 The safety provisions in force in each case for the place of the execution of the order in their latest version.

### **2. Offers, Placing of orders**

- 2.1 Offers, including all necessary preliminary work are – unless agreed otherwise – free of charge to the Client. Any deviations from the text of the request are to be indicated as a separate item. Alternative proposals are to be submitted separately.
- 2.2 The placing of the order together with any modification and expansion of this are required to be in written form; delivery through a computer fax or email without a signature is sufficient here.
- 2.3 All documents which have been made available by the Client shall remain the property of the Client and are to be returned to him without question once the contract has been executed, or if an order is not placed immediately. The content of such documents is to be treated as his trade secrets and is not to be made available or known to third parties, nor is it to be used by the Offerer or Supplier himself for his own (publicity) purposes.

### **3. Prices**

- 3.1 The agreed payments are fixed prices for the period of the execution of the order and are understood to be plus the statutory turnover tax valid in each case. With the payment all expenditure (e.g. travel expenses), services and rights of the Client are settled.
- 3.2 If the payment is not made at an all-in fixed price, but with agreed hourly and/or daily rates, the Supplier has to prepare a detailed invoice. Using the Supplier's notes which in each case he has agreed prior to this with the Client, he has in particular to give evidence of the content of the services, hours worked daily and the total number of hours. Unless any other agreement has been reached, invoicing will be made monthly.
- 3.3 Additional services over and beyond the order placed are only paid if these are ordered by the Client in writing prior to execution. The unit rates must correspond to the pricing of the main order.
- 3.4 If the Client is called upon to clear up or eliminate defective work caused by a failure in the service of the Supplier, the Client can demand that his expenses (e.g. his own salary costs, outside firms) be paid.

### **4. Supplier Services**

- 4.1 The Supplier has to provide the agreed services using his own qualified staff with the necessary care and taking into consideration the principle of economic efficiency and using optimum systems-engineering possibilities in the effective area of application in the technical context of which the results of the Supplier's work should be linked.
- 4.2 If the Supplier perceives in the provision of the contractual services that further modifications or improvements to the content and/or scope of the services appear necessary or expedient, the Supplier must inform the Client immediately in writing, providing any possible changes in cost and obtain the decision as to whether the order is to continue to be executed in the modified or improved form. The Client is obliged to provide a decision immediately.
- 4.3 The Supplier shall be responsible for the planning of the work. The result of the work planning is to be held by the Supplier in a set of documents which is to be handed over to the Client and agreed with him in good time before the work to be carried out begins. Any foreseeable or actual changes in the work planning are to be notified to the Client immediately.
- 4.4 If the work carried out is deemed unsatisfactory, the Client can intervene to rectify the project. The agreed deadlines and the exclusive responsibility of the Supplier for the proper fulfilment of the order remain unaffected by this, unless an intervention on the part of the Client is the cause of the delay to the deadline or a defect.

### **5. Collaborative services/ Client Representatives**

- 5.1 The Client will make available to the Supplier the documents and information necessary for the work to be carried out. If the Supplier does not consider these to be sufficient, he will notify the Client of this immediately.
- 5.2 Details relating to the collaborative services, e.g. allocation of personnel, plants, equipment and programmes, computing times, tools, development environment, routine environment, the necessary rights and licences, test data and workplaces together with dates and deadlines for these will be set down in the contract.
- 5.3 The Client is to nominate a responsible contact who is available to provide the Supplier with information and decisions.
- 5.4 Collaborative services in the form of inspections and approvals shall not release the Supplier from his contractual fulfilment and guarantee obligations.

### **6. Granting of usage rights to work results**

- 6.1 For the work results arising from the provision of service by the Supplier (including work results that are the object of ownership rights, copyrights, commercial protected rights or other economic usage rights), from the time of their creation, the Supplier cedes the irrevocable, non-exclusive, transferable usage rights to the client for the comprehensive usage of these work results for all of the Client's company purposes without time, space and contextual limitations for all types of usage. The granting of rights is covered by the agreed upon remuneration.
- 6.2 The previous granting of rights also includes the authorisation to edit the work results or have these edited, changed, translated, connected with other services and works from the Client and third parties or to be designed in any other way and to use the works/services and edits created in this manner as the original editions of the work results without the Supplier's consent.
- 6.3 If the provision of service by the Supplier includes (a) the creation of databases in accordance with §§ 87a ff. UrhG, the rights to these databases are in the relationship to the Supplier solely given to the Client as database creator in terms of § 87a section 2 UrhG (b) the creation of source code from computer programs and/or edits of such source code, the Supplier is obligated to give the Client this source code.
- 6.4 If the work result is a program, if nothing different is agreed upon, this includes the source and object or machine program.

### **7. Supplier Representatives**

- 7.1 The Supplier has to nominate, in agreement with the Client, a qualified person as a responsible representative who can request from the Client or arrange for the necessary collaborative services. In the event that they are unable to perform these duties, a correspondingly suitable and qualified substitute is to be appointed.
- 7.2 The Client can request for the Supplier Representative and/or collaborator to be replaced if the latter prove to be unqualified and/or unacceptable to the Client.

### **8. Sub-contractors**

- 8.1 The Supplier may only allow the order to be carried out in whole or in part by a suitable and reliable sub-contractor with the prior written agreement of the Client. The agreement of the Client shall limit neither the obligations of the Supplier nor shall it constitute any rights for the sub-contractor.
- 8.2 The Supplier has to impose on the subcontractor all obligations without restriction. In particular the insurance protection cover specified in Item 16.1 must also apply to the subcontractor.
- 8.3 The Supplier shall be obliged to make good all damages and to bear all costs resulting from the infringement of these obligations.

### **9. Changes to the Service / Premature termination**

- 9.1 The Client shall be entitled up to the acceptance to request modifications to the services agreed with the Supplier. The Supplier will conform with the Client's modification requests provided these are not unreasonable within the scope of his operating capabilities. Should the modification to a service affect contractual arrangements, e.g. payment and completion date, the Supplier will notify the Client of this immediately. The contracting parties will thereupon agree immediately in writing the adjustment to the contract resulting from the modification taking into consideration any increase or reduction in expenditure arising.
- 9.2 The Client shall be entitled to terminate the contract at any time with a notice period of 14 days. In this case fair and reasonable payment is to be made for the service carried out to this date. The Supplier is entitled to make a claim only after all results of the work existing to that point have been handed over. In the event of termination for an important reason, the statutory provisions shall apply.

### **10. Documentation**

- 10.1 The Client can demand that an essential component of the result of the work, and therefore a prerequisite for the acceptance (Cf. Item 13), is the provision of a complete set of documentation by the Supplier. The scope and content are determined according to the Client's guidelines. If the Client has not already provided an outline and there is no other express agreement, the documentation is to be developed corresponding to the regulations laid down in the ISO certification.
- 10.2 Programme documentation has to describe the sequence of events of the programme in verbal and graphic form and enable the Client to handle and maintain the programmes without any complications. It must describe fully and clearly all the details necessary for the understanding of the programme.
- 10.3 The Supplier hands over to the Client the development documentation according to how the work is progressing. The final version of the documentation (final documentation) is to be handed over to the Client at the latest 14 days prior to the acceptance date.
- 10.4 The final documentation must be processed separately and be suitable for the purposes of the target group in question. These target groups are essentially users, exploiters, computer centres, helpdesk employees, system administrators.

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## 11. Security of Product/Supply

- 11.1 The Supplier shall guarantee that all items of the order supplied and manufactured by him correspond with the statutory provisions, the generally acknowledged rules of technology, the industrial safety and the accident prevention provisions, together with the provisions relating to technical equipment, are provided with the necessary means of protection, labelling and instructions for use and are in such a condition that any user or third party is protected against any hazards of any kind when they use them in accordance with the provisions, and in particular that any risks of accidents and occupational diseases are ruled out.
- 11.2 The Supplier must ensure that offers or products ordered which are stored on EDP data carriers and are intended for the Client are free from harmful programmes (e.g. viruses). The Supplier is obliged to protect against viruses, check programmes and data before these are transmitted electronically to the Client using an anti-virus software which corresponds in each case to the most up-to-date developments in virus protection and therefore corresponds to the Client's level of security. Irrespective of any on-going claims, the Client is entitled to hold the Supplier responsible for any damages and costs arising through the non-observance of the above obligations. This applies in particular to the transfer of viruses which could have been avoided by using the latest version of the anti-virus software of the selected software supplier.

## 12. Safety at Work, Rules of Conduct, Supplier Damage Compensation Claims

- 12.1 The Supplier is – even with regard to the subcontractor employed by him – responsible for adhering to all provisions relating to industrial safety, and in particular the conditions referred to in Item 10.1 of the official instructions/additional provisions and any internal safety provisions of the Client. In addition to this, the Supplier is obliged to guarantee compliance with the General Equality of Treatment Act (AGG) by its employees together with any subcontractors employed. The Supplier undertakes to ensure that both he and also his subcontractors comply with the provisions of the Employee Delegation Law (AEntG).  
The Supplier is obligated to guarantee that both they and their sub-contractors comply with the guidelines from the Posted Workers Directive (AEntG) and the Minimum Wage Act (MiLoG). In the event of significant violations, the Client is entitled to immediately terminate the contract. Furthermore, the Supplier must compensate for any damage that arises through a violation of this obligation and must release the Client of all claims due to the MiLoG or the AEntG
- 12.2 IT and automation security:  
It is generally prohibited to connect foreign IT systems or devices to INEOS IT-systems or networks. Likewise no work on/ with INEOS IT-systems must be executed without proper authority. Each operation requires suitable authority by the client of INEOS Köln, who has assigned and is responsible for the work to be carried out.
- 12.3 If the Supplier, his subcontractors, one of his employees or anyone else employed suffers any damages of whatever nature and for whatever reason on the Client's site or in the Client's areas and/or the areas of operation, then the Client is only liable if they acted with gross negligence or intention or claims against them arise due to a loss of life, bodily injury or health problems or it deals with product liability claims or they have violated a significant contract obligation, this means a typical and basic obligation for the contract, and damages have occurred that are typically predictable through the contract. The Supplier must immediately inform the Client of any accidents that occur
- 12.4 The aforementioned limitation of liability applies to the same extent to the vicarious agents and officers of the Client.

## 12.5 INEOS Live Saving Rules

The following INEOS Life Saving Rules apply at any of Client's sites:

1. No consumption or being under the influence of alcohol or drugs at the site.
2. No smoking outside dedicated smoking areas.
3. No work on live equipment/machines to commence without authorization.
4. Safety critical devices/interlocks must not be disabled or overridden without authorization.
5. Persons working at height must use proper fall protection.
6. No entry to confined space without authorization and gas test.
7. Lifting & hoisting: no unauthorized person to enter the defined danger zone where objects can fall.

In addition to and in precedence of any of the existing rights and obligations as set out in the respective Contract, in each event of any breach of the INEOS Life Saving Rules by the employees of the Supplier or subcontractor working for the Supplier the following shall apply:

- (a) The individual who breached any of the INEOS Life Saving Rules shall be immediately removed from the Site by the Supplier on request of Client and the breach shall be reported to Client. The individual shall then not be allowed to return to the site or any other Client site for subsequent 12 months and only then if adequate evidence of suitable training to prevent re-occurrence can be provided, and
- (b) the Supplier shall pay per infringement of INEOS Life Saving Rules as liquidated damages an amount equal to 2.0% of the site turnover of the previous calendar year, and in case of a new Supplier the Year-to-Day (YTD) site turnover, based on paid invoices. This will be capped to a 4% malus in any 12 months period.

Should there be a 2nd breach of the INEOS Life Saving Rules within 12 months by the employees of the Supplier or subcontractor working for the Supplier then such breach of the INEOS Life Saving Rules shall be considered as a material breach under the respective Contract and, in addition to the measures above, Client reserves the right to reduce the contract scope or even terminate the contract without notice. Upon such termination the Supplier shall be entitled to payment for any work/services completed up to the date of termination, but shall not be entitled to reimbursement for any costs resulting directly or indirectly from such termination. The Supplier shall hand over to Client the results of the work which have been produced up to the time of termination (materials, documentation etc.) and grant unlimited and unrestricted use of such.

For the use of the sum INEOS Solvents has determined the following procedure:

1. the sum of the annual turnover of the previous year corresponding to 2.5% is used for security initiatives / training by the contracting party
2. The initiative / training must be comprehensible and have a clear connection to the Life Saving Rules
3. Ineos representatives will be informed about the planned initiative / training, if necessary Ineos representatives will participate in the action(s)

## 13. Confidentiality/Data Protection

- 13.1 The Supplier undertakes that he and his collaborators will keep secret from third parties the services carried out, the work results achieved and the documents and data carriers prepared together with all information of a technical and commercial nature obtained from the Client during the period of the contract including drawings, samples etc., and also over and beyond the duration of the contract as long and in as much as these services, results, documents, data carriers and information have not become generally known in any other way or unless the Client has specified in a written waiver that these do not need to be treated as confidential.
- 13.2 The unauthorized passing on of personal passwords can – without prejudice to other rights - lead to the cancellation of the contract without notice. The Supplier will have his collaborators sign a corresponding declaration of obligation and deliver this to the Client.
- 13.3 The Client has the right to process data relating to the Supplier or his vicarious agents connected with the business relationship, within the meaning of the Federal Data Protection Act.
- 13.4 The Supplier shall undertake to observe the provisions of the Federal Data Protection Act (BDSG) in force together with the provisions relating to Social Secrecy (§ 35 SGB I), in particular
- to treat as confidential personal data coming to his knowledge together with industrial or commercial secrets and only process these within the framework of the execution of the contract,
  - only to employ personnel who were under obligation verbally and with reference made to the criminal consequences of an infringement of duty to keep data secret in accordance with § 53 BDSG,
  - to adhere to the guidelines and instructions related to data protection and data security issued by the Client (§ 71 BDSG).
- 13.5 The order may not be used for publicity purposes.

## 14. Patent infringement, Industrial Property Rights

The Supplier shall undertake to guarantee that his delivery or service does not infringe any domestic or foreign property rights; he has to procure the necessary licences for the Client if applicable at his own expense. At the Client's request the Supplier has to intervene at his expense in any legal dispute which is brought against the Client because of such a protection infringement. The Supplier is obliged to release the Client from any third party claims and to pay him for all damages arising from them including in and out-of-court costs.

## 15. Inspection, Acceptance

- 15.1 The Supplier shall hand over the results of the work due under the contract in the agreed form at the times specified in the contract.
- 15.2 The acceptance takes place by means of a written confirmation on the part of the Client following the handover and proof of the impeccable condition of the fully documented results of the work by the Supplier. The application of §§ 377 ff of the HGB is ruled out, unless it is a case of an obvious defect. A notification of defect is made immediately if this is done 2 weeks at the latest after the defect is discovered.
- 15.3 If the programme is accepted, the impeccable condition of the programme is to be proved by carrying out a successful test using the Client's original data. If programmes are used in combination with other programmes, e.g. exchange of data, the test also has to extend to the combined function. As far as the time of the acceptance is concerned, the Client's interests are also to be taken into consideration.
- 15.4 If defects are established during acceptance, the Supplier has to eliminate the defects immediately and submit the results of the work to the Client for a fresh acceptance.
- 15.5 If part services are agreed, for each part service a separate technical acceptance takes place. The interaction of all parts is the object of the acceptance inspection in the case of the last part delivery.
- 15.6 Inspection and acceptance by the Client do not release the Supplier from his own inspection and warranty obligations.

## 16. Warranty, Liability, Product Liability

- 16.1 The Supplier shall guarantee that the services performed by him correspond to the agreed requirements and are not affected by the defects which invalidate or reduce the required use according to the contract. In addition to this, the Supplier shall guarantee that the service, including any additional services, corresponds to the generally acknowledged rules of technology for the type of use intended and does not infringe public-law provisions. This shall also apply in favour of third parties who, with the approval of the Client, come into contact with the service.

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- 16.2 If the acceptance is agreed, the warranty period shall start with the written declaration of the Client that he acknowledges that the combined services provided conform essentially with the contract (acceptance). In the case of part services, even if these are accepted, the warranty period starts with the acceptance of the combined services. For the warranty period the statutory provisions shall apply. For parts replaced or improved within the scope of the warranty, the warranty period shall start to run afresh. Any defects which were detected during the acceptance declaration and any defects which the Client declares prior to the expiry of the warranty period are to be remedied at his expense by the Supplier immediately and cost-free. He shall also bear all costs arising in connection with the subsequent performance. In urgent cases or after the defect elimination period fixed by the Client has expired, the latter shall be entitled to appoint another company to perform the task subsequently at the Supplier's expense.
- 16.3 A notification of defect is made immediately if this is done 2 weeks at the latest after the defect is discovered. The Client shall reserve the right to claim further statutory rights.
- 16.4 In so far as the Supplier has produced or supplied a delivery/service which is defective within the meaning of the product liability law, he releases the Client to this extent from all third party claims.
- 17. Rights of use**
- 17.1 The Supplier transfers to the Client with their coming into being the services performed and the results achieved including any inventions and rights of use in accordance with the copyright act for their unlimited exclusive use and exploitation as he wishes. The Client has in particular the right to the use, processing, modification, reproduction and circulation as he wishes of the services and results and the granting of rights of use to third parties. The Supplier transfers hereby the ownership of all documents and data carriers to be provided with the service in each case when they come into being in their respective working condition to the Client and keeps these until the handover to the Client.
- 17.2 If the result of the work involves a programme, this includes, unless agreed otherwise, both the source and also the object or machine programme.
- 18. Third Party Liability Insurance**
- 18.1 To cover any claims for damages which may arise in connection with the execution of the order, the Supplier has to take out and maintain a third party liability insurance to include custody and activity damages within the meaning of § 4 I 6 a and b of the General Public Liability Insurance Conditions (AHB) with an appropriate level of cover according to the nature and scope of the order, which must amount to at least EURO 1 million for personal and material damages for each individual loss. The Supplier is obliged at the Client's request to provide proof of the existence of such a third party liability insurance.
- 18.2 A limitation of liability is not agreed as a result of Item 16.1.
- 19. Invoicing, Payment, Offsetting**
- 19.1 Invoices are to be submitted separately for each order, giving the Client's order number comprehensibly and are to be sent to the billing address given in the order. The turnover tax is to be indicated separately in the invoices. The Client is entitled to send back incomplete invoices for completion or correction.
- 19.2 Payment terms shall start after the delivery conforming to the contract from the day on which the invoice complying with the order reaches the Client. In the event of the invoice being returned for a reason which cannot be justified by the Client, payment terms shall not start before the amended invoice has been received.
- 19.3 The Client is entitled to offset against his claims or retain funds because of such claims.
- 20. Non-transferability**
- 20.1 Without the written agreement of the Client, the Supplier may not transfer either his rights or his obligations from the Client's order to third parties either in full or in part or hand these over to be exercised.
- 21. Place of Jurisdiction, Applicable Law**
- 21.1 The exclusive place of jurisdiction shall be Kleve. For orders which are placed by companies associated with INEOS Solvents Germany GmbH within the meaning of § 15 AktG, the exclusive place of jurisdiction shall be the registered office of the associated company concerned.
- 21.2 The Law of the Federal Republic of Germany shall apply to the exclusion of German private international law; in particular the UN Convention on Contracts for the International Sales of Goods of 11.04.1980 shall not apply.
- 22. Partial Invalidity**
- 22.1 Should parts of these conditions be or become in full or in part legally invalid, this shall not affect the validity of the remaining provisions together with any other contract concluded.