

## DIGITRANS GMBH

### GENERAL TERMS AND CONDITIONS OF PROCUREMENT

#### 1. SCOPE

- 1.1 These General Terms and Conditions of Procurement (hereinafter in short: 'T&CPs') shall apply to all orders or commissions for supplying goods and/or providing services (hereinafter in short: 'Orders') of DigiTrans GmbH, a company with limited liability with registered office in Linz and business address 4020 Linz, Hafenstraße 47-51, entered in Linz Company Register under FN 487738 m (hereinafter in short: 'DigiTrans'), based on which a supplier or service provider, regardless of whether the supplier or service provider is a natural person or legal entity (hereinafter in short: '**Supplier**'), enters into or is already in a business relationship with DigiTrans or is commissioned by DigiTrans. These T&CPs are an integral component of every contract of DigiTrans entered into with a supplier and replace any General Terms and Conditions of the supplier (in short 'T&Cs'). Any T&Cs of the supplier shall hereby be expressly countered and they do not become part (not even implicitly) of a contract entered into between DigiTrans and the supplier unless DigiTrans agrees expressly to the inclusion of the T&Cs.
- 1.2 These T&CPs shall also apply to contractual relationships between DigiTrans and its affiliate enterprises (*verbundene Unternehmen*) (Article 189a (6) of the Austrian Commercial Code) and the procurement of supplies and/or services by DigiTrans.
- 1.3 Performance of the order by the supplier shall be regarded as acknowledgement of these T&CPs.
- 1.4 These T&CPs shall apply for all future business, even in individual cases, in particular for future additional or follow-up orders or jobs not expressly referred to as such.
- 1.5 The version of these T&CPs downloadable on the DigiTrans website: <https://www.digitrans.expert/downloads/> at the time of the relevant contract being entered into shall apply.

#### 2. OFFERS

- 2.1 Unless otherwise expressly agreed, offers, samples, estimates, consultancy and consultancy documents for DigiTrans shall be free and non-binding. Offer documents shall not be returned by DigiTrans.
- 2.2 The supplier must expressly point out in an offer in a highlighted part in the event of an offer not being binding. Where the supplier omits this notice, the offer shall be regarded as binding for at least 30 working days (including Saturdays).
- 2.3 Delivery periods and deadlines stated in the supplier's offer or agreements with the supplier are binding unless the supplier states expressly the opposite in its offer. Delivery periods shall run from the contract being entered into or, if earlier, as of the supplier receiving the order.
- 2.4 Plans, drawings, drafts, models, samples etc. provided by DigiTrans during the course of submitting the offer or performing an order to the supplier shall remain the property of DigiTrans and may not be used, reproduced or disclosed to third parties for purposes other than preparing an offer or performing a contract without the express consent of DigiTrans.

- 2.5 The language of the contract and negotiations shall be German. DigiTrans is entitled to have all non-German records and documents handed to DigiTrans by the supplier (or on behalf of the supplier) in the course of submitting the offer and/or processing an order translated into German. The supplier shall compensate for appropriate translation costs.

### **3. ORDERS**

- 3.1 Orders of DigiTrans shall always be placed in writing and exclusively by the DigiTrans management. Verbal orders shall not be binding on DigiTrans and shall not give rise to any claims of the Supplier against DigiTrans for termination of the contract or damages. The same shall apply in the same way to changes and additions to orders. Other (oral) promises, representations and warranties by DigiTrans or agreements deviating from these GPC in connection with the order shall only become binding to the Supplier in the event of written confirmation by the DigiTrans management.
- 3.2 Orders shall be confirmed by the supplier without delay in writing (order confirmation s. 3.3). Where the supplier fails to send a written order confirmation within five working days of receipt of the order, DigiTrans shall be able to cancel its order within 14 working days or, as may apply, terminate the contract in the event of one already having been entered into. In this event, the supplier will be entitled to no claims for contract cancellation or compensation. DigiTrans may demand compensation from the supplier for damages caused by terminating the contract and/or delays. The order shall automatically be deemed to have been accepted in full if no notification to the contrary is received from the supplier within 10 working days.
- 3.3 Order confirmation shall be made by returning a copy of the DigiTrans order to DigiTrans with the company-signed note: "We agree with all points of the order". Should a delivery date deviating from the order or otherwise deviating delivery or payment conditions be requested by the supplier, then these shall only become binding if DigiTrans expressly agrees to them in writing. Transferring the delivery or service ordered or commissioned to third parties (subcontractors) shall require the prior written consent of DigiTrans.
- 3.4 Transferring the delivery or service ordered or commissioned to third parties (subcontractors) shall require the prior written consent of DigiTrans.
- 3.5 Unless otherwise stated expressly, prices listed shall always be understood (including without currency specification) as such in Euros excluding VAT. Unless otherwise agreed expressly, any costs for sampling or other costs of the supplier for performing an order are included in the prices listed.

### **4. DELIVERIES AND SERVICES**

- 4.1 The supplier shall be liable for goods or services ordered by DigiTrans having the required or customarily specified characteristics and meeting in any event a description, sample or specimen of the supplier (Article 922 Austrian Civil Code).
- 4.2 The supplier shall ensure (and check) that goods or services ordered by DigiTrans are actually suitable in technical terms and with regard to compliance with legal standards (e.g. construction regulations, trading regulations etc.) and/or technical standards (ÖNORM, DIN, etc.) for the use intended by DigiTrans. The supplier shall be bound with regard to investigation, warning and notification to DigiTrans.
- 4.3 Should (i) the technical standards underpinning a contract, such as ÖNORMEN or DIN, contain liability provisions, or (ii) the validity of a contract template, in particular ÖNORM

B2110 containing liability provisions be agreed, or (iii) the application of supplier T&Cs containing liability provisions be expressly agreed, then any standards, contract templates, T&Cs or suchlike liability restrictions contained therein in favour of the supplier or detrimental liability restrictions from DigiTrans's point of view (in particular rules for apportioning the burden of proof, allocation rules, limitation rules and maximum liability thresholds deviating from these T&Cs or discretionary law) shall not apply. Any liability restrictions in favour of the supplier or liability restrictions detrimental from DigiTrans's point of view shall be expressly countered. Despite any agreement of ÖNORMEN, contract templates, T&Cs or such like, they will not be part of the contract. Restrictions of the supplier's liability may only be agreed by express written agreement between DigiTrans and the supplier.

- 4.4 The supplier shall be fully liable for damage caused by it in accordance with applicable law. This expressly excludes any liability exclusions or upper liability thresholds specifically negotiated (in particular such ones contained in ÖNORMEN, contract templates, T&Cs or such like).
- 4.5 Any delivery delays shall be reported by the supplier without delay stating the reasons.
- 4.6 Partial deliveries shall require the prior written express consent of DigiTrans. A partial delivery not agreed to expressly in writing shall lead to contractual consequences (compensation, right to terminate the contract etc.). In each case, partial deliveries shall be identified as such.
- 4.7 Deliveries made before a stated or agreed deadline and partial deliveries not expressly agreed in writing by DigiTrans may be returned by DigiTrans at the supplier's cost or (as DigiTrans opts) stored with third parties. In each case, DigiTrans may refuse acceptance.
- 4.8 Unless otherwise expressly agreed, deliveries to DigiTrans shall always be made with carriage and packaging included. The supplier shall bear the transport risk in each case, including regulation of the transfer of risk on the basis of DDP named place of destination in accordance with INCOTERMS 2020.
- 4.9 Unless otherwise specified in the order, deliveries shall be packaged in a manner suitable for transport, adequately protected and secured, and accompanied by appropriate commercial and technical documentation. At least a packing slip and a delivery bill stating the order details (order and article number, article designation, supplier name/number, etc.) shall be enclosed.
- 4.10 Deliveries outside the opening hours of the DigiTrans warehouse or the agreed receiving station/delivery address do not have to be accepted by DigiTrans or the agreed recipient. The risk for damage, theft or loss of the goods taken by DigiTrans outside of opening hours (e.g. when accepted at night) for the period up to the DigiTrans warehouse being open again as normal shall be borne by the supplier.
- 4.11 In cases where DigiTrans performance of contractual obligations is impossible or significantly hindered due to force majeure, strikes or unrest, DigiTrans may terminate the contract or demand performance of the delivery or service at a later moment without the supplier being entitled to any claims. The right of supplier to terminate the contract in the event of delays making commitment to the contract unreasonable shall remain unaffected by this.

## **5. NOTIFICATION OF DEFECTS AND WARRANTY**

- 5.1 In accordance with the proper course of business, DigiTrans shall inspect deliveries and/or services of the supplier for defects and notify the supplier of any defect in writing. The supplier shall expressly

waive compliance with the duty to inspect and complain (Articles 377, 378 Austrian Commercial Code) by DigiTrans, in particular the defence of delayed reporting of defects.

- 5.2 Any confirmation of receipt or acceptance by DigiTrans shall not apply as acknowledgement with regard to the goods being complete or free from defects.
- 5.3 Should random samples highlight defects, DigiTrans shall be entitled to warranty rights and compensation claims for the entire delivery and/or service.
- 5.4 Subject to different provisions in these T&CPs, the general warranty rules and deadlines of the Austrian Civil Code shall apply unless otherwise expressly agreed.

## **6. PAYMENT**

- 6.1 The supplier's payment deadlines shall commence at the earliest with receipt by DigiTrans of a proper invoice meeting with requirements of the Austrian VAT Act, however in all cases not before the complete delivery of the agreed goods and/or services. Payments for partial deliveries or partial services can be contractually agreed.
- 6.2 In the absence of a different written agreement, the following payment periods shall apply: 14 days with a discount of 3% deducted or 60 days net.
- 6.3 The supplier may not assign its claim against DigiTrans to third parties where DigiTrans has not granted its written consent. DigiTrans may not unreasonably refuse its consent to assign claims.
- 6.4 DigiTrans shall also be expressly entitled to offsetting with disputed claims against the supplier. In contrast, the supplier shall only be allowed to offset to the extent that counterclaims are legally established or acknowledged by DigiTrans.
- 6.5 In the event of delivery and service (or a part thereof) being defective or in breach of contract, DigiTrans shall be entitled to retain payment until performance of the whole in accordance with the contract. Payment deadlines shall start to run again after full performance in accordance with the contract.
- 6.6 Payment by DigiTrans is neither acknowledgement of the claim asserted by the supplier, nor does it represent a waiver of rights that DigiTrans is entitled to (in particular warranty or compensation).

## **7. DIGITRANS LIABILITY RESTRICTION**

- 7.1 It is specified that the supplier shall only be entitled to compensation claims against DigiTrans exclusively in the event of wilful intent or gross negligence by DigiTrans. On the other hand, the limitation periods under Article 1489 of the Austrian Civil Code are curtailed in such a way that claims for damages against DigiTrans are to be asserted in the courts after six months of knowledge of the damage and the tortfeasor, however no later than after three years of the contract being entered into with other limitation.
- 7.2 Regardless of the legal reason for liability, (contract, offence, strict liability or other legal grounds), where permitted by law DigiTrans's liability is restricted to the order value of the contract whose obligations DigiTrans has breached. DigiTrans's liability towards the supplier for lost profit, downtime, contractual losses or any other consequential losses is excluded.
- 7.3 The exclusion of liability also covers claims against employees of DigiTrans, representatives and

vicarious agents due to injuries inflicted by them on the supplier without reference to a contract they have with the supplier.

- 7.4 Should (i) the technical standards underpinning a contract such as ÖNORMEN or DIN contain liability restrictions, or (ii) the validity of a contract template, in particular ÖNORM B2110 containing liability exclusions be agreed, or (iii) the application of T&Cs of the supplier containing liability restrictions be expressly agreed, then, if the liability restrictions contained in these standards, contract templates, T&Cs or suchlike represent an expansion of DigiTrans's liability compared to the liability restrictions stated in clauses 7.1 to 7.3, in any event the liability restrictions stated in clauses 7.1 up to 7.3 shall apply. Stricter disadvantageous liability provisions from DigiTrans's point of view shall be expressly countered beforehand. Despite any agreement of ÖNORMEN, contract templates, T&Cs or such like, they will not be part of the contract.

## **8. CONFIDENTIALITY**

- 8.1 The supplier shall treat all information passed to it via enquiries, orders, entering into and processing the contract or otherwise via business cooperation with DigiTrans as strictly confidential, in particular business and trade secrets disclosed or otherwise obtained from DigiTrans. The supplier may only disclose this information with the prior written express consent of DigiTrans. The supplier shall hold DigiTrans harmless in the event of this duty of non-disclosure being breached.
- 8.2 The supplier may only refer to the business relationship with DigiTrans, in particular for advertising purposes, after the prior written consent of DigiTrans.

## **9. RESERVATION OF TITLE AND MATERIAL SUPPLIES**

- 9.1 Agreeing a reservation of title by the supplier shall be expressly waived, and a different written agreement by DigiTrans shall be expressly agreed to in advance. After the goods to be delivered have been unloaded at DigiTrans's plant or DDP Place of performance according to INCOTERMS 2020 (point 4.8), title to the delivery shall pass unencumbered without delay to DigiTrans, a service after complete performance and acceptance of the service by DigiTrans.
- 9.2 In any event, DigiTrans shall retain title to any material supplies by DigiTrans, and they shall be stored and identified separately at the supplier. The supplier shall pay corresponding compensation in the event of reduced value and loss. The supplier shall inspect the supplied material without delay following receipt for its suitability and freedom from error. DigiTrans be entitled to enter the site of the materials supplied where reasonable for the supplier and with appropriate notice.

## **10. PROTECTIVE RIGHTS OF THIRD PARTIES**

The supplier shall confirm that its delivery and/or service does not infringe protective rights or copyright of third parties and it shall hold DigiTrans harmless in this respect.

## **11. CLOSING PROVISIONS**

- 11.1 Individual parts of these T&CPs being invalid does not affect the validity of the remaining provisions. DigiTrans and the supplier undertake now, based on the good faith of the contracting parties, to find a replacement provision coming as close as possible to the commercial outcome of the invalid provision.

- 11.2 Austrian Law shall apply to the exclusion of rules regarding renvoi and conflict of laws of international private law and CISG. The place of performance is the registered office of DigiTrans.
- 11.3 Sole jurisdiction for all disputes resulting from (or in connection with) orders and the contractual relationship or future contracts between DigiTrans and the suppliers lies with the court competent for Linz.