

## **Conditions of Purchase**

of

**DELTEC Automotive  
GmbH & Co. KG  
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Germany**

– hereinafter referred to as "DELTEC" –

**Contents**

§ 1 Preamble ..... 3

§ 2 Subject Matter of the Conditions of Purchase..... 3

§ 3 Purchase Orders and Framework Agreements ..... 4

§ 4 Documentation and Modifications..... 4

§ 5 Prices ..... 4

§ 6 Terms of Payment ..... 5

§ 7 Order Processing..... 5

§ 8 Delivery Dates..... 6

§ 9 Delivery Terms and Packaging ..... 6

§ 10 Late Delivery Charges ..... 6

§ 11 Incoming and Outgoing Inspection..... 7

§ 12 Liability for Material Defects and Defects of Title..... 7

§ 13 Intellectual / Third-Party Property Rights ..... 8

§ 14 Product Information and Product Recall ..... 9

§ 15 Product Liability Insurance ..... 9

§ 16 Quality..... 9

§ 17 New Deliverables, Product Discontinuation ..... 10

§ 18 Proof of Origin..... 10

§ 19 Foreign Trade Law..... 10

§ 20 Safety of Supply Chain / Conflict Minerals ..... 11

§ 21 Force Majeure ..... 11

§ 22 Non-Disclosure..... 11

§ 23 Data Protection..... 12

§ 24 Compliance ..... 12

§ 25 Place of Jurisdiction, Contract Language and Applicable Law..... 12

§ 26 Final Provisions ..... 13

## **§ 1 Preamble**

DELTEC Automotive GmbH & Co. KG is a leading provider of PCBAs in the business areas of automotive and industrial electronics.

The Supplier is aware that any products which DELTEC obtains from the Supplier (hereinafter referred to as "Contractual Products") will be integrated into end products of DELTEC. The end products will be marketed by DELTEC worldwide to its customers, and used by the customers particularly in the fields of business mentioned above.

The Supplier is having full knowledge of the high level of requirements, in terms of quality, safety, continuity and competitiveness inherent in the above mentioned industry, declares as a professional of manufacture and/or sale/supply, that it has the technical capability, the know-how and the necessary resources to deliver and/or to manufacture and to support the Deliverables with the required quality.

This said, the Parties shall agree the following, whereby it shall be mutually understood and agreed that this preamble shall be legally binding and an integral part of the Purchase conditions.

## **§ 2 Subject Matter of the Conditions of Purchase**

1. The Purchase conditions governs the cooperation and conditions for deliveries of Contractual Products between DELTEC and the Supplier. The Purchase conditions is the basis for all purchasing transactions between DELTEC and the Supplier that are concluded between DELTEC and the Supplier.
2. In any case, any and all rights and obligations created by a purchase transaction shall apply only between the Supplier and DELTEC.
3. The Purchase conditions or individual provisions thereof may be modified or excluded in other contracts and agreements only by DELTEC Procurement. In this case, the modification or the exclusion of the Purchase conditions or individual provisions thereof shall override the Purchase conditions. The remaining, non-modified or non-excluded provisions of the Purchase conditions shall remain unaffected.
4. If individual provisions of the Purchase conditions contradict the corresponding provisions of other contracts and agreements or if the provisions mutually exclude each other, the purchase conditions shall apply.
5. If the Purchase conditions or the other contracts and agreements do not contain any specific regulation, the statutory provisions of the German Civil Code shall apply.

### **§ 3 Purchase Orders and Framework Agreements**

1. The basis of DELTEC Purchase Orders sent to the Supplier should consist of mutually agreed frame contracts between the respective Parties that define, in particular, the Contractual Products, delivery volumes and delivery time. Furthermore, delivery schedules or individual purchase orders may be placed with the Supplier on the basis of the Purchase conditions without reference to any existing Framework Agreements.
2. DELTEC purchase orders may be issued in writing, by fax, by email, or, if agreed, by some other form of transmission (e.g. electronic data interchange (EDI)) to the Supplier, or they may even be initiated by the Supplier by means of vendor managed inventory (VMI).
3. An amendment to a Purchase Order shall only be effective if DELTEC confirms such amendment in writing, e.g. issues a Purchase Order amendment or a new Purchase Order reflecting such changes.

### **§ 4 Documentation and Modifications**

1. Supplier shall provide to DELTEC at no charge reasonable documentation for the Deliverables including but not limited to relevant product literature, datasheets, release documentation, product descriptions and specifications, CoCs, and any other documentation reasonably required for use of the Deliverables.
2. The Supplier shall be obliged diligently to check all documents sent to it for the purpose of executing the individual delivery and to inform DELTEC in writing about any errors, discrepancies or other obvious items that could interfere with performing the delivery in accordance with the Purchase conditions. The documents shall be deemed to be in proper order if the Supplier does not meet its obligation to report otherwise at least four (4) weeks prior to the agreed delivery date.

Any deviations from the specifications or modifications of the Contractual Product as well as any changes made to the manufacturing process since the delivery of the last version that could impair electrical or mechanical functions in the application shall be communicated to DELTEC at least six (6) months in advance for express consent.

### **§ 5 Prices**

1. The agreed prices are fixed prices plus the applicable statutory value-added tax (VAT) for the term agreed in the Framework Agreements, delivery schedule or individual purchase orders taking into consideration the agreed delivery schedule and including the rates of customs duty applicable in each case.
2. The Supplier shall inform DELTEC if rates of customs duty change. In this case, the prices shall be modified upon agreement of the two Parties.
3. Basically, any changes in price have to be negotiated between the two parties before becoming effective. The Parties shall regularly review the Prices with the objective to reduce the Prices by identifying potential savings.
4. Upon DELTEC's request, Supplier shall provide a breakdown of the Prices for each Deliverable including any third party products or services. The information provided shall allow DELTEC to perform a comprehensive audit of Supplier's basis of calculation and include information such as cost of supplies, HR costs, pro rata overheads, financing costs and profit margin.

## **§ 6 Terms of Payment**

1. Payment and invoicing shall be carried out in the currency agreed for the individual purchase order. The mode of payment shall be determined by DELTEC.
2. Invoices shall be paid within 14 calendar days minus a 3% cash discount or net after 90 calendar days. The term of payment shall commence as soon as the delivery or, if agreed, the partial delivery has been completed in full and the duly issued invoice has been received.
3. If deliveries are accepted ahead of schedule, the term of payment shall commence at the originally agreed delivery date. Cash discount is also permitted if DELTEC sets off payments or justifiably withholds payments due to defects or other reasons. In this case, the term of payment shall commence upon complete removal of the defects.
4. For each delivery, the Supplier shall issue an invoice that complies with the relevant fiscal requirements (e.g. VAT registration number or a note that a reserve charge system is applicable). The invoice must contain at least the DELTEC purchase order number, material number, invoice number, invoice date, invoice amount, separately itemized value-added tax and the VAT identification number (USt-IdNr.) of the Supplier and of DELTEC. Copies of the invoice must be labeled as copies.
5. If the automatic credit process has been agreed between the Parties, the Supplier shall not issue an invoice, but shall grant a credit by DELTEC instead
  - a) in the event of automatic invoicing of incoming goods at the time the Contractual Products are received or
  - b) in the event of consignment settlement of accounts at the time at which the Contractual Products are removed from the consignment stock.
6. The Supplier shall not assign or pledge any payment claims without DELTEC prior written consent.

## **§ 7 Order Processing**

1. Order processing (accelerations, postponements, reminders) shall be handled by the assigned staff members at the DELTEC factories performing the work. Furthermore, changes in delivery quantities and prices, terminations, and other changes shall be binding only if they are made by DELTEC Corporate Procurement or by an agent appointed by it.
2. Order confirmations, delivery notes, invoices and other correspondence must include the purchase order details as specified on the DELTEC Purchase Order (purchase order number, purchase order item, material number, and quantity) and must be itemized separately in accordance with the DELTEC Purchase Orders on which they are based.
3. The Supplier undertakes to dispatch order confirmations promptly enough that they are received by DELTEC no later than three (3) calendar days after the purchase order date unless the delivery of the Contractual Products takes place within this time interval.
4. In the event Supplier has neither accepted nor declined a Purchase Order within five (5) calendar days of receiving a Purchase Order, such Purchase Order shall be deemed accepted by Supplier.
5. The delivery dates mentioned on the daily order acknowledgement are fixed dates and should reflect the receipt date at DELTEC. If a calendar week is acknowledged as delivery date, Wednesday of the acknowledged week shall be the fixed date.

6. Partial deliveries shall be allowed only if the prior written consent by DELTEC has been obtained.
7. Requirement plannings and/or forecasts forwarded by DELTEC are without obligation on the part of DELTEC; they are just intended for planning purposes for the Supplier.

## **§ 8 Delivery Dates**

1. The Supplier is obliged to make deliveries in full by the agreed delivery dates. The agreed delivery dates are understood to be the dates on which the deliveries are scheduled to arrive at the delivery address specified by DELTEC.
2. The Supplier shall be entitled to make a delivery up to a maximum of three (3) calendar days prior to the agreed delivery date. Furthermore, any deliveries to be made before the agreed delivery date shall require prior consent by DELTEC.
3. The Supplier shall check all current DELTEC purchase orders in due time, but no later than seven (7) calendar days prior to the due date, to determine whether the delivery dates can be met. If it becomes obvious that a delivery will be delayed, the Supplier shall be obliged to notify DELTEC without undue delay in writing (letter, fax or email), stating the reasons for and the duration of the delay. At the same time, the Supplier shall be obliged to communicate in writing the corrective measures it plans to take as well as the new proposal for a binding delivery schedule. In the event of failure to meet the delivery date, the supplier, without further notice, shall be in default. The right of DELTEC to claim a penalty and to assert any other rights due to the delay in respect of the initially agreed delivery schedule shall remain unaffected.
4. In case the Customer requires earlier or later delivery dates than the dates agreed upon, the contract partners will use their best efforts to find a solution which satisfies both parties.

## **§ 9 Delivery Terms and Packaging**

1. Products shall be supplied by Supplier within regular business hours at the Delivery Date in good order and conditions. Upon request, Supplier shall provide state of the art logistics services (e.g. a consignment store on DELTEC premises) at no cost additional for DELTEC. Further details shall be laid out in a separate agreement.
2. Deliveries shall be carried out delivered duty paid DDP Incoterms® 2010. The respective delivery address is indicated in the DELTEC purchase order.
3. Every delivery shall be accompanied by delivery notes stating the content and all purchase order details (purchase order number, purchase order item, material number and quantity). If any of these documents or items of information is missing or incomplete, DELTEC can refuse to accept the delivery and may return it to the Supplier at the Supplier's expense.
4. Supplier`s packaging of any Product shall be secure and safe to ensure that such Products reaches the relevant Delivery Point in good order and condition. On request, Supplier shall provide DELTEC with 48 hours` notice prior to any delivery including the dispatch data (e.g. flight number, airway bill number).

## **§ 10 Late Delivery Charges**

1. If Supplier fails to meet any Delivery Date DELTEC may claim charges for late delivery of one (1) % of the purchase price of the corresponding Accepted Purchase Order per calendar day of delay up to an overall maximum of 30 % of such price.

2. Supplier shall, within ten (10) Business Days from a request by DELTEC, pay any incurred late delivery charges, or, at DELTEC's option, issue a credit note to be applied against a future purchase by DELTEC from Supplier.
3. The payment of the late delivery charges or parts thereof shall not discharge Supplier of its obligation to supply or perform the Deliverables or of any other liabilities or obligations under this agreement or by Law. DELTEC shall not be required to expressly reserve its rights under this section when the Deliverables are handed over to DELTEC.
4. Supplier shall use best efforts to minimize negative effects of any delay, including the use of the fastest possible method of delivery of the Deliverables at Supplier's expense.
5. For the avoidance of doubt, any mutual postponement of the Delivery Date or any acceptance of Deliverables shall not be construed as a waiver of DELTEC's rights under this section.

## **§ 11 Incoming and Outgoing Inspection**

1. Incoming Inspection by DELTEC
  - a) DELTEC shall inspect a reasonable amount of control samples of the deliveries of Products only as to apparent shipping damage to the packaging of the Products ("Incoming Inspection"). If any Product fails to pass the Incoming Inspection, DELTEC shall notify Supplier thereof within 20 Business Days of the delivery of the Products.
  - b) For the avoidance of doubt, DELTEC shall not be obliged to conduct an Incoming Inspecting with regards to Products directly delivered by Supplier to DELTEC.
  - c) DELTEC shall not be obliged to examine delivered Products any further than agreed under this section.
  - d) A delayed notification (as set out in 1 a)) shall not be construed as a waiver of DELTEC's warranty rights which are based upon DELTEC's fault.
2. Outgoing Inspection by Supplier
  - a) Prior to delivering the Products to DELTEC, Supplier shall inspect each Product as to whether the Products comply with the Specifications and/or Supplier's warranties and representations pursuant and shall record the results and, upon request of DELTEC, submit the records to DELTEC.

## **§ 12 Liability for Material Defects and Defects of Title**

1. Unless otherwise stipulated in the Purchase conditions, the statutory provisions regarding liability for material defects and defects of title shall apply.
2. The limitation period for asserting rights due to material defects shall be 36 months after delivery to the address specified by DELTEC. The limitation period as set forth in Clause § 13 para. 5 of the Purchase conditions (Third-Party Property Rights) shall not be affected.
3. In particular, the costs and risk of returning defective Contractual Products shall be borne by the Supplier. Moreover, the Supplier shall bear all expenses that arise due to remedy, such as but not limited to transport costs, travel expenses, labor expenses, costs for dismantling and making structural alterations, material costs and any test expenses.

4. The limitation period for asserting rights due to material defects of remedied Contractual Products (subsequent improvement or delivery) shall be 36 months commencing upon receipt of the remedied Contractual Products.
5. The Contractual Products or parts thereof claimed to be defective shall remain the property of DELTEC until their replacement.
6. Further claims and rights of DELTEC shall remain unaffected by this provision.

### **§ 13 Intellectual / Third-Party Property Rights**

1. Any intellectual property rights in the course of projects or the general partnership shall belong to DELTEC
2. The Supplier represents and warrants that the Contractual Products are free from third-party property rights that exclude or limit the intended use of the Contractual Products by DELTEC and/or its customers.
3. If the intended use of the Contractual Products or parts thereof is impaired or prohibited by a claim due to infringement of third-party property rights or if the threat of such an impairment or prohibition exists, the Supplier shall compensate DELTEC for all resulting damage and is authorized and obliged to do one of the following at its own discretion and own costs within a reasonable period
  - a) to modify or to replace the Contractual Products or the affected part thereof in such a manner that no third-party property rights are violated, but that these modified or replaced Contractual Products nevertheless conform to the contractual provisions, or
  - b) to procure for DELTEC the right to use the Contractual Products without restrictions and without additional costs for DELTEC.
4. If the Supplier does not meet this obligation within a reasonable period of time despite being requested by DELTEC, DELTEC shall be entitled to procure from the holder of the property rights and at the expense of the Supplier the license to utilize the affected Contractual Products in accordance with the Purchase conditions. To the extent possible, DELTEC shall include the Supplier in the contract negotiations with the holder of the property rights and shall take into consideration the legitimate interests of the Supplier.
5. The Supplier shall assume the sole and unlimited liability vis-à-vis third parties asserting a claim due to the infringement of property rights by the Contractual Products. The Supplier shall indemnify and hold harmless DELTEC and its customers from any claims arising from the infringement of an industrial property right, copyright or other property right. The indemnification pertains to all expenses that necessarily arise to and which may have been paid by DELTEC from or in connection with the assertion of a claim by a third party. In the event of indemnification, DELTEC undertakes to grant to the Supplier, to a reasonable extent, requested support in view of the claims being asserted, where the costs for this support shall be borne by the Supplier.
6. Further rights of DELTEC, in particular the right to procure replacements and the right to claim damages, shall remain unaffected.
7. The limitation period for claims due to the infringement of third-party property rights shall be five (5) years and shall commence on the date of delivery to DELTEC.

## **§ 14 Product Information and Product Recall**

1. If the Supplier is or becomes aware that Contractual Products already delivered deviate from the specifications, or defects or potential quality problems or modifications occur, that may affect the reliability or product characteristics (higher failure rate from life tests), DELTEC shall be informed in writing without undue delay.
2. The Supplier undertakes to inform DELTEC without undue delay about any product liability lawsuits or other measures being directed against the Supplier or one of its suppliers by a third party provided that Contractual Products or parts also used by DELTEC are affected.
3. The Supplier shall impose this duty to furnish information upon its suppliers and upon the manufacturers of the Contractual Products.
4. The Supplier shall bear the costs for all suitable measures taken by DELTEC to avert damage (e.g. product recalls) insofar as these measures can be attributed to the defective delivery from the Supplier (expanded product liability).

## **§ 15 Product Liability Insurance**

To protect possible rights of recourse and to limit economic damage, the Supplier shall be obliged to take out an expanded product liability insurance policy of a sufficient amount that covers consequential damage caused by defects, particularly costs for dismantling and installation, and that shall indemnify DELTEC from third-party claims for damages in the event that supplier parts are the cause of the damage. The Supplier shall present to DELTEC suitable proof of insurance coverage without undue delay upon conclusion of the Purchase conditions and then once a year on request.

The Supplier shall give immediate notice to DELTEC in the event of a cancellation or variation in the terms of cover or any material adverse change in Suppliers' insurance arrangements that may affect DELTEC's interest.

## **§ 16 Quality**

1. The Supplier shall bear responsibility for the quality of the Contractual Products to be delivered. The Supplier shall ensure that all deliverables comply with the state of the art in technology, the applicable statutory provisions, and the regulations and directives of government authorities, trade associations and professional associations. The Supplier shall be obliged to indicate any modifications that have been made necessary due to the further development of the generally accepted rules of technology or due to the introduction or modification of statutory provisions or government regulations. The Supplier shall indemnify DELTEC against any claims arising from an infringement of this provision. The Supplier shall ensure that the Supplier's suppliers also observe the quality requirements set forth in the Purchase conditions.
2. The Supplier shall require its suppliers to keep records of their quality checks and to make these records available without undue delay to DELTEC upon request.
3. DELTEC shall be entitled to perform audits or to have audits performed at the Supplier's premises and at the premises of the Supplier's suppliers and at the premises of the manufacturers of the Contractual Products.
4. At the request of DELTEC, the Supplier shall grant DELTEC customers access to its premises and to the factories of its suppliers and of the manufacturers if DELTEC has contractually granted this right to its customers.

5. The Supplier shall without undue delay inform DELTEC in writing about substantial modifications to its quality management system.
6. The Supplier must have and maintain a valid ISO 9001:2008 certification or a certification of higher or at least equivalent level.

### **§ 17 New Deliverables, Product Discontinuation**

1. If Supplier intends to introduce a product or service replacing a specific Deliverable, Supplier shall inform DELTEC thereof and provide DELTEC with the specifications of such New Deliverable as soon as possible.
2. The Supplier undertakes to inform DELTEC in writing about the discontinuation of Contractual Products by its suppliers no later than six (6) months prior to the last opportunity to place a purchase order. Upon request, the Supplier shall present to DELTEC a binding quotation for a last time buy.
3. The Supplier shall be liable for any damage and other disadvantages suffered by DELTEC due to a non-compliant declaration or one submitted late.

### **§ 18 Proof of Origin**

The Supplier shall be obliged to forward the required customs declarations regarding the origin of the Contractual Products to DELTEC in due time. The Supplier shall be liable for any and all damage suffered by DELTEC due to the improper or delayed submission of such declarations.

### **§ 19 Foreign Trade Law**

1. The Supplier shall comply with all requirements and provisions of the applicable national and international customs law, export control law and other foreign trade and payments law (hereinafter jointly referred to as "foreign trade law"). The Supplier shall provide to DELTEC Automotive GmbH & Co. KG (hereinafter referred to as "DELTEC") in writing at the latest two weeks after ordering or, in the case of modifications, without undue delay all information and data that DELTEC requires in order to comply with the foreign trade law in the event of export, import and re-export, including, without being limited to the following:
  - all applicable numbers of the EC Dual Use-List or export list including the Export Control Classification Number (ECCN) in accordance with the US Export Administration Regulations (EAR) or – in case the provisions of the US International Traffic in Arms Regulations (ITAR) are applicable – including the US Munitions List Number (USML);
  - the statistical goods number pursuant to the current goods classification of the foreign trade statistics or the Harmonized System (HS) code, and
  - the country of origin and, if required by DELTEC, suppliers' declarations regarding the preferential origin or certificates of origin.
2. The Supplier shall be liable for any damage suffered by DELTEC due to the improper or delayed submission of declarations.

## **§ 20 Safety of Supply Chain / Conflict Minerals**

1. The Supplier shall be obliged to comply with international safety standards such as Authorized Economic Operator (AEO), Customs Trade Partnership Against Terrorism or the like in the supply chain.
2. The supplier undertakes to identify the use of so-called "Conflict Minerals" (Tin, Gold, Tantalum, Tungsten) in the supply chain. Through effective and sufficient measures the supplier guarantees that materials / components provided to DELTEC do not contain any minerals according to section 1502 of the US-american Dodd-Frank Act.

## **§ 21 Force Majeure**

1. Any case of force majeure that prevents either Party from performing its contractual obligations in full or in part, such as fire, floods, explosions, war, embargo, acts of civil or military authorities, natural catastrophes, or similar circumstances beyond the control of the Party affected and that was not caused by the fault of the Party affected shall exempt both Parties until the force majeure event ends from fulfilling the purchase conditions up to the extent caused by the actual impediment. Strikes, lockouts and other labour dispute measures are not force majeure, as neither are delivery difficulties at manufacturers, suppliers or certified subcontractors.
2. The Party affected by force majeure shall notify the other Party without undue delay of the beginning and end of force majeure.

## **§ 22 Non-Disclosure**

1. Each Party undertakes to treat as confidential all information such as but not limited to know-how, skills, experience, documents, inventions, production processes, designs, business and trade secrets, software in any form (hereinafter referred to as "Confidential Information") – irrespective of its form – that is made available to it by the other Party for the execution of the purchase conditions, other contracts and/or agreements, including the contracts themselves, and to disclose this Confidential Information exclusively to company members who need this Confidential Information in order to fulfill the purchase conditions or any other related agreements.
2. The Party receiving the information shall obtain the prior written consent of the other Party in order to disclose and/or hand over Confidential Information to persons outside its company or to staff members that do not need this information. The receiving Party shall be entitled to disclose the Confidential Information to any company within its group to the extent necessary to fulfill the purchase conditions or any other related agreements provided that the receiving Party holds the majority of shares in this company and that this company undertakes to comply with the conditions of this non-disclosure provision.
3. The non-disclosure obligation shall not apply to Confidential Information

- a) that is or becomes generally known without infringement of this non-disclosure provision, or
  - b) that is made accessible to the receiving Party by a third party without infringement of this non-disclosure provision and without any restrictions, or
  - c) that the receiving Party has owned or independently acquired or developed before this non-disclosure provision took effect, or
  - d) whose disclosure and transfer have been approved in writing by the Party making it available.
4. Any received documents shall be returned without undue delay at any time at the request of the Party that makes them available and subject to statutory retention period requirements must be destroyed.

### **§ 23 Data Protection**

Taking into account the applicable provisions of the German Data Protection Act (BDSG), DELTEC shall be entitled to process and utilize – for its own purposes – the Supplier's data received as part of the business relationship. The Supplier undertakes to comply with the provisions of the BDSG with regard to the data received from DELTEC.

### **§ 24 Compliance**

1. The Supplier shall be obliged to comply with the laws of the applicable legal system(s). In particular, the Supplier shall neither actively or passively, nor directly or indirectly participate in any form of corruption or bribery.
2. If the Supplier infringes these obligations through its own fault, DELTEC shall have the right to withdraw from the purchase order or any related agreements, notwithstanding any further claims. If it is possible to remedy the breach of duty, DELTEC may exercise this right of withdrawal only after a reasonable period of time granted for remedying the breach of duty expires without the situation being remedied.

### **§ 25 Place of Jurisdiction, Contract Language and Applicable Law**

1. The contractual relationship between the Supplier and DELTEC shall be governed by German law, excluding the regulations of the private international law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. The language of the Agreement shall be German. If the Parties use another language in addition to German, the German wording shall prevail.
3. Any disputes arising from the purchase conditions shall be resolved amicably. If an amicable settlement cannot be found, the Parties shall have recourse to the responsible courts. It is agreed that Regensburg (Germany) shall be the exclusive place of jurisdiction for all disputes arising indirectly or directly from the purchase conditions, Framework Agreements or individual purchase orders.

## **§ 26 Final Provisions**

1. No collateral agreements have been concluded. Any modifications and amendments to the purchase conditions shall be made in writing in order to be effective. This shall also apply to any modification to the requirement for the written form itself.
2. Should individual provisions of the purchase conditions be or become ineffective or impracticable in whole or in part, or should the purchase conditions contain loopholes, the effectiveness of the remaining provisions shall not be affected. The ineffective, impracticable, or missing provision shall be deemed retroactively replaced by an effective and practicable provision such as the Parties would have agreed upon with regard to the economic purpose of the purchase conditions. The Parties shall be obliged to confirm such a provision in the prescribed form.