

# Arena One GmbH

## Standard Terms and Conditions of Purchase

### (As at May 2011)

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#### 1. Scope of Application

These Standard Terms and Conditions of Purchase shall apply exclusively to purchase contracts, contracts for work and contracts for work and materials (hereinafter "supplies") concluded by Arena One GmbH ("AO"). Suppliers' deviating or additional terms and conditions are rejected, unless AO has agreed to them expressly and in writing. This shall also apply if AO, despite being aware of the suppliers' deviating terms and conditions, accepts the delivery without reservation.

#### 2. Ordering/Order Confirmation

- 2.1. The content of the written order of AO applies alone. If the supplier does not accept an order within three working days from receipt, AO is no longer bound by it.
- 2.2. Orders agreed verbally (including by phone) or supplementary agreements must be confirmed in writing by AO to be valid. Orders placed via electronic data communication fulfil the written form requirement.

#### 3. Shipment/Packaging

- 3.1. In addition to the shipping address, the order details (order no., order date, receiving centre, if necessary, the name of the recipient, and the material no.) are to be provided.
- 3.2. Costs incurred by the misrouting of shipments will be payable by the supplier if he, she or it is responsible for the misrouting of the shipment.
- 3.3. Packaging materials are to be taken back in accordance with the relevant packaging regulations.

#### 4. Delivery Time/Delivery

- 4.1. The delivery dates given in the order are binding. The supplier shall inform AO in writing without undue delay should circumstances occur or should he, she or it anticipate circumstances as a result of which the agreed delivery date cannot be complied with.
- 4.2. Deliveries shall take place free to the place of receipt. Delivery confirmation must be made by an employee of AO who is authorised to do so. The transportation risk, including the unloading risk, shall be borne by the supplier.
- 4.3. If the place of receipt is on private land, not owned by AO, entry to and driving on the premises must be announced in due time. The instructions of AO's specialist staff and/or the owner are to be followed.

#### 5. Prices/Invoicing

- 5.1. The prices quoted in the order encompass all charges, duties, packaging, transportation and unloading costs as

well as insurance to our place of receipt. They include all discounts and extra charges and are subject to the addition of statutory value-added tax.

- 5.2. After successful delivery/supply – separated according to orders - verifiable invoices, which are to be issued in duplicate, are to be sent to AO at the invoice address provided in the order and/or to AO's administration; order numbers are to be given, all accounting documentation, such as, for example, item lists, are to be enclosed.
- 5.3. Each invoice shall separately identifies the statutory value added tax. Original invoices may not be enclosed with the delivery of the goods.
- 5.4. The supplier is responsible for any consequences arising from not adhering to the obligations cited in [5.2](#) and [5.2](#).
- 5.5. The payment due date is 30 days net after receiving the invoice. For payment within 14 days after receipt of the invoice, 3% discount shall be granted.
- 5.6. Late payment shall first arise after a reminder or after a calendar-defined payment deadline.
- 5.7. AO shall have the rights of offsetting and retention to the extent provided by law.

#### 6. Stadium Regulations and Liability

- 6.1. AO is entitled to assert the statutory claims for defective goods without limitation. The supplier shall ensure that the subject matter of performance is in agreement with the relevant legal provisions. The properties of a sample or a test sample shall be regarded as the agreed quality.
- 6.2. A complaint about a defect under Article 377 of the German Commercial Code (HGB) shall have been promptly made if it is notified within a period of 2 working days after receipt of the goods (in respect of obvious defects) and from the discovery of the defect (in respect of hidden defects); in respect of food, within 2 days after receipt of the goods (in respect of obvious defects) and from the discovery of the defect (in respect of hidden defects).

#### 7. Rescission

- 7.1. The parties may terminate the contract where there is good cause to do so. Such a cause is, in particular, if, as a consequence of decisions made by government authorities, the interests of one of the parties in rendering the contractual service no longer apply, bankruptcy proceedings or a settlement request have been instigated against the assets of either party, the prerequisites for such bankruptcy proceedings or a settlement request are present or the supplier negligently fails to honour his, her or its obligation to subsequent performance within a written, set adequate period.

## 8. Confidentiality and Data Protection

- 8.1. The supplier has to treat all confidential information that AO makes available to him, her or it in connection with the contract as absolutely confidential. Confidential information in the meaning of this provision is all information, documents, details or data designated as such or which are to be regarded as confidential by their nature. The confidentiality obligation does not apply to information of which the supplier was already aware at receipt thereof or the supplier can demonstrate that he, she or it learned of it from a different source (e.g. from third parties without any confidentiality reservation or through his, her or its own independent efforts).
- 8.2. The supplier undertakes to grant access to AO's confidential information only to such employees, subcontractors and suppliers that are entrusted with rendering the services in the context of this contract.
- 8.3. The obligations under Numbers 8.1 and 8.2 are not affected by the termination of the contract. All documents handed over by AO remain the property of AO. The same applies to copies of them, even if they have been made by the supplier. They may not be made available to third parties and after the execution of the contract and at the request of AO or at the latest however after expiry of the period of limitation for claims arising from defects they are to be returned to AO in full or, at its discretion, destroyed completely. Specialists and subcontractors employed by the supplier are not regarded as third parties if they have given the same undertaking to the supplier on the confidential handling of data. The supplier will be liable for all damages which AO may incur as a result of a breach of this obligation.

## 9. Publication/Advertising

Any assessment or announcement of the business relationship existing with AO in publications or for advertising purposes is permissible only with the prior, written agreement of AO.

## 10. Miscellaneous

The supplier guarantees that, in respect of rental agreements, the rented work equipment fulfil the requirements relating to the construction of equipment according to Article 7 of the Operational Safety Ordinance (*Betriebssicherheitsverordnung*) and that the legally required periodic tests have been carried out.

## 11. Final Provisions

- 11.1. If the customer is a merchant within the meaning of the German Commercial Code [*Handelsgesetzbuch*], a legal entity under public law or a special fund under public law, Munich shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship. Furthermore, AO is entitled to bring an action before the court which has jurisdiction at the registered office of the customer.
- 11.2. The language of the contract is German. German law shall apply to the exclusion of the United Nations

Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG).

- 11.3. Assignments and other transfers of the supplier's rights and obligations outside the application area of Article 354 (a) of the German Commercial Code are excluded.
- 11.4. Emails do not satisfy the written form in the meaning of these general terms and conditions of business and/or individual contracts concluded on the basis of it, apart from the exception cited in Number 2.2.
- 11.5. Should individual provisions of these terms and conditions be or become invalid or unenforceable, the contract as a whole and the other provisions of these terms and conditions shall remain valid. The contractual parties shall replace the invalid/unenforceable provision from the start of the invalidity/unenforceability by an equivalent provision which is as close as possible economically having regard to the interests of both parties. The same shall apply to any gaps.