

# General Terms and Conditions

## SupplyOn AG

### General Terms and Conditions for SupplyOn Services

Version 4.0 as at January 2019

#### § 1 Subject matter of the agreement and scope of application

(1) In its online platform in the Internet (<http://www.SupplyOn.com>) ("Platform") SupplyOn AG (hereinafter referred to as "SupplyOn") offers services exclusively for entrepreneurs, i.e. for natural and legal persons or an incorporated partnership acting as part of their or its commercial or freelance professional activity in concluding a legal transaction. By acknowledging that the General Terms and Conditions apply, the Customer warrants that it uses the SupplyOn Services as part of an ongoing activity to obtain income.

(2) For the business relationship between SupplyOn and the Contractual Partner these General Terms and Conditions (hereinafter referred to as "**GTC**") and any parts of the Service Specification applicable to individual SupplyOn Services shall apply exclusively for the provision of SupplyOn Services. For any other services of SupplyOn (e.g. training and consulting services) as well as services offered by SupplyOn Partners, special terms and conditions may apply in addition to these GTC. Such special terms and conditions shall prevail over these GTC in the event of any contradictions. SupplyOn shall refer to the applicability of such special terms and conditions in the respective case.

(3) The version of these GTC applicable at the time of conclusion of the Agreement shall be controlling for all, including future, legal relationships with SupplyOn.

#### § 2 Definitions

(1) "SupplyOn Services" facilitate the processing of electronic business transactions by means of a browser interface or integration in internal systems of the Customer, notably in respect to sourcing and engineering, supply chain management and quality management. SupplyOn Services include processing, temporary storage, transfer and analysis of data. In order to use the SupplyOn Services, the Contractual Partner must first register on the Platform. After registering successfully, the Contractual Partner is provided with a user account on the Platform. Various SupplyOn Services can be booked under this user account. The Service Specifications confirmed by the Customer at the time of registration shall apply to these SupplyOn Services.

(2) "Customers" or "Contractual Partners" of SupplyOn shall be all companies SupplyOn has granted access for the SupplyOn Services.

(3) "Buying Company" refers to companies which, as Customers, wish to acquire goods from other Customers (Supplying Companies), obtain services and exchange information in connection with these.

(4) "Supplying Company" refers to companies which as Customers offer other customers (Buying Companies) goods or services and exchange information in connection with these.

(5) "Affiliated Companies" refers to companies which have to be included in the consolidated financial statements of the corporate group by way of full consolidation pursuant to Sec. 300 of the German Commercial Code [*Handelsgesetzbuch – HGB*] or pursuant to internationally comparable accounting principles.

(6) "Administrator" refers to employees of the Customer, who enter, change or delete authorizations.

(7) "Users" refers to employees of the Customer authorized and registered by the Customer's Administrators or by the Customer itself, who use SupplyOn Services.

(8) "Platform Data" refers to all Access Data (for example Customer ID, user name or password), Contract Data (data on the existing contractual relationship with the Customer as regards use of the SupplyOn Services), Transaction Data (log files electronically recorded during use of the SupplyOn Services), Company Profile Data (information on the company, products and services provided by the Customer), Business Data (data which a Customer transmits to another Customer when using the SupplyOn Services) and Registration Data (Contract Data and Company Profile Data).

(9) "Confidential Information" refers to all documents and information marked as "confidential" by the disclosing Contracting Party in writing or orally of which the Contracting Parties gained knowledge on the basis of the cooperation as well as all information which by its nature is confidential.

(10) "SupplyOn Partner" refers to a company which cooperates permanently with SupplyOn and which acts as a vicarious agent [*Erfüllungsgehilfe*] in providing services as part of the SupplyOn Services for the Contractual Partner. The scope of the services to be provided by the SupplyOn Partner is defined by the Service Specification applicable to the SupplyOn Service in question. Affiliated Companies of SupplyOn may also be SupplyOn Partners.

(11) "Contracting Parties" are SupplyOn and the Contractual Partner in question.

### **§ 3 Contract conclusion**

#### **(1)(Registration on the Platform)**

For the registration with SupplyOn, the Contractual Partner is required to submit an application to use the Platform (registration). The application for registration is submitted online. Acceptance of such application for registration shall be subject to SupplyOn's freely exercised discretion and shall be effected by sending an invoice or by another declaration of acceptance.

The Contractual Partner is obliged to provide correct and complete Registration Data, to update any changes without undue delay or to inform SupplyOn of such changes. The registration must be made by the Contractual Partner. A commercial agent, an association and/or any other similar organization may not make a registration on behalf of the Contractual Partner.

#### **(2)(Online application for SupplyOn Services)**

Customers who have registered on the Platform may apply to SupplyOn there for being granted access to use individual or all SupplyOn Services. The application for being granted access to use individual SupplyOn Services is submitted online. Upon receipt of the online application for being granted access to use one or more SupplyOn Services SupplyOn shall send an e-mail to the Customers which confirms receipt of the

online application by SupplyOn and lists the details of the application (order confirmation). Such order confirmation shall not constitute an acceptance of offer, but is merely to inform the Customer that SupplyOn has received the online application. Acceptance of the online application shall be subject to SupplyOn's freely exercised discretion and shall be effected by granting the Customer access to use the respective SupplyOn Service, by sending an invoice or by another declaration of acceptance. § 3 (1) subsection 2 sentences 2 and 3 shall apply *mutatis mutandis*.

### (3) (Registration of Affiliated Companies)

Affiliated Companies of a Contractual Partner may use those SupplyOn Services for which the Contractual Partner is registered if the Affiliated Company likewise registers with SupplyOn, submits the entry number of the Contractual Partner (which the latter received from SupplyOn upon registering) to SupplyOn, and the Contractual Partner and SupplyOn each consent to the Affiliated Company's use of the SupplyOn Services. If the Contractual Partner consents to the Affiliated Company using the SupplyOn Services it has commissioned, that constitutes consent to disclosure of all Platform Data and Confidential Information of which the Affiliated Company may potentially gain knowledge as part of use of the SupplyOn Services.

SupplyOn may, if so requested by an Affiliated Company which has already registered with SupplyOn, provide the Affiliated Company with the telephone number and e-mail address of the Contractual Partner's Administrator, if the Affiliated Company has proven that it is actually an Affiliated Company of the Contractual Partner.

By merely granting the Affiliated Company access to use the SupplyOn Services, no own contractual relationship shall be established between SupplyOn and the Affiliated Company; rather, the contractual relationship with the Contractual Partner shall be extended by the possibility of the Affiliated Company using the SupplyOn Services, meaning that the Affiliated Company can act on the Platform only on the Contractual Partner's account. Where the Affiliated Company's access to use SupplyOn Services is consented to, the Contractual Partner shall assume liability for all acts of the Affiliated Company in connection with the SupplyOn Services. If SupplyOn should become entitled to claims against the Affiliated Company, the Contractual Partner hereby declares that it will assume the obligations from such claims by way of assumption of joint liability, regardless of the legal grounds for them.

These provisions shall apply *mutatis mutandis* where an Affiliated Company wishes to register for further SupplyOn Services or a legally dependent unit of the Contractual Partner (divisions, departments, plants, etc.) wishes to register for the SupplyOn Services.

This shall not affect SupplyOn's right to conclude its own agreements on the use of SupplyOn Services with the Affiliated Companies and the legally dependent units of the Contractual Partner (divisions, departments, plants, etc.).

### (4) Contract conclusion in written form

All agreements pursuant to this § 3 can also be made through conclusion of a contract in text or written form.

## **§ 4 Performance obligations of SupplyOn**

### (1) (Main item of performance)

SupplyOn shall make available to the Contractual Partner the contractually agreed SupplyOn Services itself or pledge that the SupplyOn Services are made available to the Contractual Partner by any SupplyOn

Partners named in a Service Specification. Unless otherwise agreed, the SupplyOn Services shall be used exclusively on the basis of these GTC and the applicable Service Specification. If a Service Specification states that the SupplyOn Services are to be provided by a SupplyOn Partner, i.e. a third party, the latter's General Terms and Conditions shall additionally apply, if this was pointed out when the service module in question was booked.

For the use of the SupplyOn Services, SupplyOn shall grant the Contractual Partner a non-transferable, non-sublicensable, non-exclusive right, which shall be restricted to the term of the agreement, to use the contractually agreed SupplyOn Services and the information and data provided within this scope. If the SupplyOn Services are made available by a SupplyOn Partner, SupplyOn pledges that the Contractual Partner shall be granted a non-transferable, non-sublicensable, non-exclusive right, which shall be restricted to the term of the agreement, to use the contractually agreed SupplyOn Services and the information and data provided within this scope.

#### (2)(Additional services)

In addition, SupplyOn offers training and consulting services as well as services offered by SupplyOn's partners. Such additional services can be applied for online pursuant to § 3 (2). For such services, special terms and conditions may apply in addition to these GTC. Such special terms and conditions shall prevail over these GTC in the event of any contradictions. SupplyOn shall refer to the applicability of such special terms and conditions in the respective case.

#### (3)(Status of SupplyOn)

SupplyOn shall be merely the technical service provider for the provision and transmission of Transaction Data between the Buying Company and the Supplying Company as well as of the declarations of the Users on the Platform or in connection with the use of the SupplyOn Services. SupplyOn shall not act for the Customers as representative, courier, other agent or broker. Agreements between the Customers shall be concluded outside the use of the Platform unless the Customers concerned conclude a binding agreement to the contrary which applies exclusively to the Customers themselves and/or SupplyOn explicitly indicates in the Service Specification that agreements between the Customers concerning a specific SupplyOn Service may be concluded within the Platform.

#### (4)(Release of SupplyOn and its vicarious agents [*Erfüllungsgehilfen*] from their performance obligations in the event of *force majeure*)

SupplyOn is not obliged to perform its services pursuant to § 4 where it becomes impossible for SupplyOn or its vicarious agents to perform their services due to cases of *force majeure* such as industrial action, acts of nature, war or similar unforeseeable events beyond SupplyOn's scope of responsibility.

### **§ 5 Obligations of the Contractual Partner**

#### (1)(Compliance with the GTC)

The Contractual Partner is obliged to comply with the GTC. The Contractual Partner shall impose an obligation on the Users and the Affiliated Companies which were granted access to use the SupplyOn Services and the legally dependent units of the Contractual Partner in the event of the Contractual Partner's consent to the use of the SupplyOn Services to comply with these GTC and shall have full responsibility in the event of breaches of the GTC.

#### (2)(Selection of qualified employees; representation rights)

The Contractual Partner has to name at least one Administrator of its company who manages the Access and Registration Data. The Contractual Partner may appoint as Users only natural persons with the relevant expertise. It must grant them power of representation to make and accept declarations of intent [Willenserklärungen] on its behalf. The Contractual Partner shall ensure under its own responsibility that, where necessary, a successor for the Administrator is registered with the system without undue delay.

### (3)(Data formats)

The Contractual Partner shall be obliged to make the Platform Data available to SupplyOn in the prescribed formats by using the interfaces provided for this.

### (4)(Responsibility for technical requirements and data verification)

It is entirely within the Contractual Partner's scope of responsibility to provide the equipment and technology required for the use of the SupplyOn Services and to observe the system requirements of the latter. This notably applies to all necessary equipment, data transmission lines, telecommunications services, browsers and the use of encryption methods. The technical requirements shall be determined by the applicable Service Specification or the information additionally provided by SupplyOn as part of conclusion of the contract with the Customer. The Contractual Partner shall bear the costs incurred for this as well as any other charges.

Moreover, it is the Contractual Partner's sole responsibility to have its Users call up and verify all Platform Data referred by SupplyOn.

### (5)(Prohibition of manipulation)

The Contractual Partner shall not manipulate the SupplyOn Services in any way whatsoever.

Contractual Partners may notably not make any offers which inappropriately manipulate the pricing. When a Contractual Partner is registered both as Buying Company and Supplying Company, it must ensure that Platform Data cannot be exchanged between Users of the buying side and the supplying side.

The Contractual Partner may notably not enter or transfer any data which contains viruses, trojan horses or similar executable program codes which are capable of damaging, viewing, intercepting, forwarding or deleting data or systems, or of providing unauthorized access to data, systems or areas. The Contractual Partner shall not use any mechanisms, software or any other routines which can interfere with or put an excessive strain on SupplyOn Services.

### (6)(Safekeeping of the Users' Access Data)

The Contractual Partner is obliged to pass on Access Data only to the authorized Users the Contractual Partner has registered with SupplyOn. Third parties must be prevented from gaining knowledge of, accessing and using Access Data. This notably applies also to employees of the Contractual Partner who are not named as authorized Users.

Any acts in which the Access Data of the Contractual Partner or one of its Users is used shall be deemed acts performed by the Contractual Partner and shall be attributed to the Contractual Partner. Acts by third parties shall not be attributed to the Contractual Partner where the Contractual Partner is able to submit proof of having met the requirements of sentences 1 to 3.

### (7)(Prohibition of illegal content)

Offers or requests that are misleading or in violation of legal regulations, notably penal law, public morality, official orders or rights of third parties, are inadmissible. It is inadmissible to offer objects or services which are subject to statutory sales or supply restrictions or prohibitions. This notably applies to medicinal products and drugs, stolen goods, radioactive materials, toxic substances, explosives, securities, loans or any other financial instruments, as well as to objects or services infringing on copyrights, patents, trademarks, trade secrets, any other IP rights, personality rights or third-party data protection rights, or offers which violate provisions under competition law. Goods or services that are only allowed to be offered subject to proof required by law shall not be offered or requested before the proof required by law has been received on the Platform.

#### (8)(Compliance to export control regulations)

The Contractual Partner undertakes to observe US, European, German and other import, reimport, export and reexport control laws and regulations in their version as amended from time to time, where they are applicable. The Contractual Partner undertakes not to use the SupplyOn Services in countries in which the use of such services is prohibited under export control laws or other applicable regulations.

#### (9)(Remuneration obligation)

The Contractual Partner is obliged to pay the currently applicable prices for the agreed SupplyOn Service according to the price agreement between the Contracting Parties for registration, use and utilization of the SupplyOn Service. The payment terms shall be based on § 8.

#### (10)(Prohibition on modification and exploitation; IP rights)

The Contractual Partner shall not modify, publish, transfer or participate in the transfer and sale of the SupplyOn Services or parts thereof, nor store or reproduce them or produce, distribute or display derived content or commercially exploit the SupplyOn Services and information in any other way. This shall also apply to service modules that are booked as part of SupplyOn Services and are performed by SupplyOn Partners.

### **§ 6 SupplyOn's rights**

#### (1)(Rights upon registration)

SupplyOn and the SupplyOn Partners are entitled, but not obliged, to verify the Registration Data of the Contractual Partner by collecting data from the Contractual Partner itself or from third parties. SupplyOn may demand proof of power of representation for each User registered by the Contractual Partner. SupplyOn may refuse registration for objective reasons, notably where a prospective customer provides wrong or misleading Registration Data, if there is clear indication that its creditworthiness is not ensured or if there is clear indication that applicable international, European or national legal regulations are violated.

#### (2)(Rights of use)

SupplyOn may, for the term of the Agreement, use the Company Profile and Business Data, word and device marks, designations and other ancillary copyrights of the Contractual Partner for the purposes required for performance of the Agreement, notably reproduce, edit, translate and transmit such data and information and make it available to other Customers for use. These authorizations shall apply to SupplyOn Partners only if the Contractual Partner has booked SupplyOn Services that are performed by that SupplyOn Partner.

Domain names, word and device marks as well as trade names of SupplyOn and, if applicable, of the SupplyOn Partners are protected by law. Any other marks and designations appearing in the SupplyOn

Services are not the intellectual property of SupplyOn. The foregoing shall be without prejudice to the rights of the respective holders. SupplyOn reserves all ownership rights and rights of use in the present and future structuring and design of the SupplyOn Services and the website of SupplyOn.

### (3)(Blocking of illegal content)

SupplyOn and the SupplyOn Partners may, in the event of gaining positive knowledge of the illegality, or upon learning of facts and circumstances which indicate illegality, block illegal content without undue delay, notably in the event of violation/infringement pursuant to § 5 (7).

### (4)(Withdrawal of the right of use in the event of misuse)

SupplyOn is entitled to temporarily or permanently exclude Customers (including the Users in question), or have them excluded by the SupplyOn Partners, from using individual SupplyOn Services in certain cases.

If a Customer or one of its Users violates provisions of this GTC, notably those in § 5, SupplyOn or the SupplyOn Partners may block data of the Customer stored on the Platform fully or partially for other Customers one (1) week after issuance of a warning. Blocking the data without warning and without observance of the one-week period is permissible only if

1. the Customer or one of its Users has given cause for termination of the contractual relationship without notice or
2. the facilities of SupplyOn or public safety or public order are at risk or
3. immediate blocking was ordered by the authorities or is required for statutory reasons.

After termination of Customer's violation of its duties, SupplyOn shall lift the blocking, if no further violations on the part of the Customer are to be expected.

## **§ 7 Liability**

### (1)(Mutual liability for damages)

The Contracting Parties shall be mutually liable for any damage caused by them, regardless of the legal cause, only if (i) such damage is attributable to the material breach of duties, jeopardizing the purpose of the Agreement, or breach of duties the fulfillment of which is a pre-requisite for proper performance of the Agreement, and which is subject to a culpable act (i.e. at least negligent), or (ii) such damage has been caused by gross negligence or intent, or (iii) one of the Contracting Parties has assumed a guarantee.

### (2)(Unlimited liability)

In the event of a breach of duty caused by intent or gross negligence, the assumption of a guarantee, fraudulent concealment of defects, injury to life, limb or health or claims under the product liability act [*Produkthaftungsgesetz*], the Contractual Partners shall be mutually liable without limitation. In such cases § 7 (3) to (7) shall not apply.

### (3)(Exclusion of liability for indirect damages)

In the event of a culpable (i.e. at least negligent) material breach of duty, jeopardizing the purpose of the Agreement or a culpable breach of duty, the fulfillment of which is a pre-requisite for proper performance of the Agreement, liability for indirect damages, for example lost profits and consequential damages, shall be excluded – also in respect of third-party Contractual Partners of the Contracting Parties.

(4)(Limits on liability typical of such type of agreement)

In the event of a culpable (i.e. at least negligent) material breach of duty jeopardizing the purpose of the Agreement or a culpable breach of duty the fulfillment of which is a pre-requisite for proper performance of the Agreement, liability on the part of the Contracting Parties shall be limited to the respective damage that can be typically foreseen by the Contractual Partners in connection with the SupplyOn Services.

(5)(Liability limited to an amount)

In the event of a culpable (i.e. at least negligent) material breach of duty jeopardizing the purpose of the Agreement or a culpable breach of duty the fulfillment of which is a pre-requisite for proper performance of the Agreement, liability on the part of SupplyOn shall be limited to the amount equaling the regular remuneration the Contractual Partner is to pay to SupplyOn within one year for the respective SupplyOn Service agreed.

(6)(Exclusion of liability of the lessor)

Where permissible under the law, SupplyOn shall not be liable like a lessor for defects to the Platform.

(7)(Statute of limitations)

All mutual liability claims shall fall under the statute of limitations within one year of creation of such claim and the injured party gaining knowledge of the circumstances giving rise to the claim or which it could have gained knowledge of without gross negligence. Regardless of such knowledge, the liability claims shall fall under the statute of limitations at the latest three years from the date of the damaging event. The statutory provisions on limitation of actions shall apply to liability claims in accordance with § 7(1) and (2).

(8)(Claims against employees and agents)

The above liability limitations shall include claims against legal representatives, vicarious agents or agents of the Contracting Parties.

(9)(Mutual indemnification)

If third parties, including state institutions, assert against a Contracting Party claims or infringements on the basis of the other Contracting Party having breached the obligations set forth in these GTC, the infringing party shall without undue delay indemnify the Contracting Party against which claims have been asserted against such claims; it shall offer the Contracting Party against which claims have been asserted assistance in the legal defense and indemnify it against the costs of such legal defense.

The Contracting Party against whom claims have been asserted shall be obliged to (i) inform the other Contracting Party about the asserted claims without undue delay in writing or in text form, (ii) not submit any concessions or acknowledgments or equivalent declarations to the party asserting the claims and (iii) allow the other Contracting Party to conduct all judicial and extrajudicial proceedings/negotiations regarding the claims at its expense. This shall not apply to the extent the Contracting Party against which claims have been asserted is a necessary party to the litigation. There shall be no claim to indemnification pursuant to this § 7(9) if the party to be indemnified suffers a loss of a right that is attributable to the fact that it does not fulfill its obligations under sentences 2 and 3 of this § 7(9).

This § 7(9) shall not apply if the Contracting Party with the indemnification obligation is not responsible for the breach of duty.



## **§ 8 Rendering of accounts and terms of payment**

### **(1)(Prices)**

The prices stated in the price agreement concluded between the Contracting Parties shall apply.

### **(2)(Payment methods)**

Invoices may be settled via transfer, direct debiting or any other method agreed with SupplyOn. Unless SupplyOn has explicitly accepted payment by check in favor of SupplyOn in an individual case, this payment method shall not be accepted by SupplyOn. Payments shall be deemed received when the amount payable is credited to SupplyOn's account.

### **(3)(Due date and invoicing)**

Invoices shall be due and payable by the due date indicated on the invoice upon receipt. SupplyOn shall not be obliged to provide the Customer with invoices in a specific form. In this respect, SupplyOn may also send the Contractual Partner invoices solely in electronic form.

### **(4)(Reimbursement)**

Any reimbursement claims of the Contractual Partner, notably as a result of excess invoice amounts paid or double payments, shall be credited to the Contractual Partner's invoice account and/or set off against the next claim(s) due.

## **§ 9 Amendments to the GTC or the scope of services**

### **(1)(Amendments to the GTC)**

SupplyOn shall inform the Contractual Partner of any amendments to the GTC by providing it with the amended version of the GTC.

The Contractual Partner may object to amendments to the GTC within a period of four (4) weeks of announcement of the amendments and receipt of the amended version of the GTC.

If the Contractual Partner does not object to the amendments within such four week period, the amendments shall become effective after expiry of the four week period. If the Contractual Partner objects to the amendments to the GTC within the four week period, the GTC in the version applicable on the date of conclusion of the Agreement shall continue to apply for the Contractual Partner.

### **(2)(Amendments to the scope of services)**

SupplyOn may perform reasonable changes to the scope of services at any time without the Contractual Partner's consent if

1. the amendments were caused by mandatory statutory requirements or requirements of the authorities or mandatory requirements made by third parties for which SupplyOn is not responsible, or
2. the amendments are in the Customer's interest, with processes being improved and services being offered more efficiently and without the Customer having any disadvantages.

SupplyOn shall notify the Contractual Partner of such amendments at least in text form (such as by e-mail or otherwise, e.g. on the Platform).

Any other changes to the scope of services may be performed in accordance with the amendment procedure for GTC stipulated in § 9 (1) subject to the following provision: In lieu of the right to object provided for in § 9 (1), the Contractual Partner may terminate the SupplyOn Services affected by the amendments within a period of four (4) weeks of announcement and receipt of the amendment notification with effect from commencement of the amendments to the scope of services. In the event of material amendments to the scope of services which affect also other SupplyOn Services, the Contractual Partner may terminate the Agreement in its entirety.

## **§ 10 Term and termination of the Agreement**

### **(1)(Term; ordinary termination)**

The commencement of the Agreement for booked SupplyOn Services is determined by the date agreed between the Contracting Parties. Unless otherwise agreed between the Contracting Parties, the agreement for a SupplyOn Service shall run until the end of the calendar month from the commencement date and the following twelve (12) months ("Basic Term"). Thereafter it shall be extended by a further twelve (12) months each time ("Extension Period") unless terminated in writing or in text form on three (3) months' notice for the end of the Basic Term or an Extension Period. The right to terminate the individual SupplyOn Services shall be as defined in the respective agreement. The other aspects of the contractual relationship shall not be affected by termination of an individual SupplyOn Service.

### **(2)(Termination for good cause)**

The Contracting Parties are entitled to terminate the contractual relationship as a whole without observing any notice period for good cause if, taking into account all circumstances of the individual case and giving due consideration to the interests of both parties, the party giving notice of termination cannot reasonably be requested to continue the contractual relationship or to use the SupplyOn Service until the agreed termination or until expiry of the notice period for termination.

For SupplyOn, good cause exists in particular if a Contractual Partner misuses the SupplyOn Services, if it seriously or repeatedly breaches its contractual obligations pursuant to § 5 (5) to (8), if insolvency proceedings are opened against the assets of the Contractual Partner or such opening is imminent or if a significant deterioration occurs in respect of the Contractual Partner's asset situation which gives rise to fear that it will not fulfill its obligations temporarily or permanently. In the event of valid termination without notice, SupplyOn may block the Platform Data without observing a notice period or without warning.

### **(3)(Form of termination)**

Any termination requires at least text form. This shall also apply to any changes to this requirement for text form. Transmission via electronic means (including transmission by e-mail or online) shall be explicitly admissible.

### **(4)(Effect of the termination)**

Upon the effectiveness of the termination, all outstanding remuneration to be paid by the Contractual Partner shall be due immediately. Where the Contractual Partner has made advance payments for SupplyOn Services not used, SupplyOn shall reimburse to the Contractual Partner any payments already made proportionate to the scope of the SupplyOn Services not used. § 8 (4) shall apply *mutatis mutandis*. Upon the

effectiveness of the termination, the performance obligations of the Contracting Parties shall end, with the exception of post-contractual obligations such as release, deletion and blocking of the Platform Data.

#### (5)(Reactivation fee)

SupplyOn reserves the right to charge a reactivation fee in the event of a Contractual Partner's re-registration.

### **§ 11 Confidentiality**

#### (1)(Obligation to maintain confidentiality)

The Contracting Parties undertake to maintain confidentiality in respect to all Confidential Information during the term of this Agreement until such Confidential Information is public. This shall not apply where these GTC or the Service Specification provide for a right to pass on such Confidential Information.

#### (2)(Right to pass on Confidential Information and Platform Data)

SupplyOn may pass on Confidential Information and Platform Data to Customers and Users in order to fulfill the purpose of the Agreement. In particular, SupplyOn may inform all Buying Companies about which SupplyOn Services the Supplying Companies have been granted access to or about the contact data of relevant contact persons at the Supplying Company for use of the SupplyOn Services.

In addition, SupplyOn may inform companies that are involved in contract negotiations with SupplyOn about use of the SupplyOn Services as a Buying Company ("Potential Buying Companies") upon request about which suppliers of the Potential Buying Company have been registered for which SupplyOn Services. This shall be done solely by notification about which of the suppliers on a list provided to SupplyOn by the Potential Buying Company have also been registered with SupplyOn as a Supplying Company and for which services.

SupplyOn is further entitled to pass on to all already connected Buying Companies information concerning the contractual relationship between SupplyOn and the Supplying Companies (such as contractual status, access granted, imminent deactivation due to failure to pay) and which is relevant and necessary for the electronic handling of business processes between Supplying Companies and Buying Companies.

If the contractual relationship with the Contractual Partner as a whole or the Contractual Partner's right to use a SupplyOn Service terminates, SupplyOn may furthermore inform the Affiliated Companies which were granted access to the SupplyOn Services concerned as well as the legally dependent units of the Contractual Partner which were granted access to the SupplyOn Services concerned that the use of the online platform or the SupplyOn Service concerned is no longer possible upon termination of the contractual relationship, and that such use requires the conclusion of a separate agreement.

If the Contractual Partner books a SupplyOn Service that is to be performed by a SupplyOn Partner, SupplyOn may pass on all Confidential Information and Platform Data to the SupplyOn Partner.

SupplyOn may also pass on Confidential Information and Platform Data to Affiliated Companies. The Contractual Partner hereby explicitly consents that the data passed on to Affiliated Companies of SupplyOn is allowed to be used on any online platforms operated by such Affiliated Companies, with the consequence that the information that can be seen on the Platform can also be seen on the online platforms of the Affiliated Companies and appropriate agreements can be concluded.

The protection of personal data is additionally governed by § 12 of these General Terms and Conditions and

the Privacy Notice.

## **§ 12 Data protection**

### **(1)(Information of the Contractual Partner)**

SupplyOn informs the Contractual Partner that SupplyOn collects, processes and uses the personal Platform Data required for the fulfillment of the contractual purpose and that it transmits such data to other Customers. The Contractual Partner is obliged to inform its employees who use the SupplyOn Services, accordingly, and undertakes that only employees who have been informed accordingly will use the SupplyOn Services.

### **(2)(Transparency)**

Details of the collection, processing, use and transmission of the personal Platform Data of the respective SupplyOn Services are set forth in the Privacy Notice

## **§ 13 Assignment, offsetting, right of retention**

### **(1)(Assignment)**

Assignment of the rights of use or other rights, in full or in part, by the Contractual Partner in connection with the SupplyOn Services shall be excluded.

### **(2)(Offsetting, right of retention)**

Offsetting of claims or exercise of a right of retention against SupplyOn shall be excluded, unless the claim is undisputed or has been legally established.

## **§ 14 Final provisions**

### **(1)(Governing law)**

This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention and the conflicts of law rules.

### **(2)(Place of performance)**

The place of performance shall be SupplyOn's registered office.

### **(3)(Place of jurisdiction)**

Exclusive place of jurisdiction for all disputes arising from or in connection with these GTC is Munich, District Court Munich I [*Landgericht München*].

### **(4)(Changes and amendments)**

Any changes or amendments to these GTC require at least text form. § 10 (3) sentence 2 shall apply *mutatis mutandis*.

### **(5)(Defense clause)**

Deviating or supplementary general terms and conditions of the Contractual Partner shall not apply, even if

SupplyOn does not expressly contradict their applicability.

(6)(Miscellaneous)

Should any of the provisions in these GTC and the agreements concluded between the Contracting Parties be invalid or unenforceable in whole or in part, this shall not affect the remaining provisions. The Contracting Parties shall replace any invalid provision without undue delay by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same shall apply for a gap in the Agreement.