

Supplier Terms & Conditions of Purchase

Last updated: October 2024

1. Definitions.

“Applicable Laws” means all provisions of constitutions, laws, statutes, ordinances, rules, decrees, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or governmental authorities (of any level), applicable to (i) Supplier at its location of manufacture of the goods and/or performance of the services and (ii) the location indicated for delivery in Averna’s purchase order.

“Averna” means the Averna entity placing the purchase order for Goods and/or Services.

“Confidential Information” means any information provided by Averna to Supplier, including but not limited to product requirements, specifications, data, pricing, sales methods and techniques, sales figures, marketing plans, budget and other financial information, employee details, internal business policies and procedures. Confidential Information shall also include information belonging to Averna’s customers, such as customer names, contact details, customer product requirements or specifications, as well as any information generated during and as a result of these Terms and Conditions or the Purchase Order (including any pricing arrangements, rebate deals, settlement discounts, terms of payment, other terms of trade, joint marketing plans and artwork, design and specifications for any goods and/or services manufactured specifically at Averna’s request), or is otherwise reasonably identifiable as confidential or proprietary information. Confidential Information does not include information or knowledge which is already publicly known, or which subsequently becomes generally publicly known other than as a direct or indirect result of a breach of these Terms and Conditions by the Supplier.

“Goods” means, whether off the shelf or custom, all materials, components, parts, products, machines, tooling, equipment, test equipment, technical data, software, computer software, computer software documentation, and other tangible items or documentary information furnished or required to be furnished by Supplier under a Purchase Order.

“Purchase Order” means the purchase order between Averna and Supplier for the purchase and sale of Goods and/or Services, to which these Terms and Conditions are attached or are incorporated by reference.

“Terms and Conditions” means the present supplier terms and conditions of purchase that govern all Purchase Orders of Averna. The Terms and Conditions include Averna’s Purchase Order.



“**Services**” means all technical assistance, support, maintenance, consultation, and other effort furnished or required to be furnished by Supplier under a Purchase Order.

“**Supplier**” means the party indicated in the Purchase Order that is contracting with Averna for the purchase and sale of Goods and/or Services.

2. Onboarding. Supplier is required to complete Averna’s onboarding process for suppliers by having an authorized representative of Supplier sign Averna’s [Supplier Code of Conduct](#).

3. Acceptance and Fulfillment.

- a. Purchase Orders made by Averna are governed exclusively by these Terms and Conditions. All additional, different, pre-printed, incorporated, attached, and/or implied terms or conditions of purchase or sale, including without limitation references to the same in any acceptance of this order, acknowledgments, or confirmations (as applicable), are hereby rejected by the parties, shall not be binding on either party, shall not form part of any order, and are null and void for all purposes.
- b. Supplier is deemed to have accepted the Purchase Order and these Terms and Conditions if Supplier does not reject the Purchase Order within twenty-four (24) hours of receiving it.
- c. Supplier agrees that these Terms and Conditions comprise the entire agreement between the parties with respect to the Purchase Order, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- d. In the event of a conflict or inconsistency between the Purchase Order and these Terms and Conditions, these Terms and Conditions shall prevail. These Terms and Conditions prevail over any other terms and conditions of purchase or sale regardless of whether, when, or how such terms and conditions are presented.

4. Delivery of Goods and Services.

- a. Supplier shall ensure that the Goods and/or Services are delivered in the quantities, on the date(s) and at the location specified by Averna. Time and rate of delivery of the Goods and/or Services are and shall remain of the essence.
- b. No acts of Averna, including without limitation, modifications to a Purchase Order or these Terms and Conditions, or acceptance of late deliveries shall constitute a waiver of this term.
- c. Supplier may not make any changes to the delivery schedule, including shipments made in advance of delivery dates, without the prior written approval of Averna.
- d. **Supplier shall promptly notify Averna as soon as it becomes aware of any delay or potential delay in delivery, including due to supply constraints.** If Supplier does not, or reasonably indicates by statements or actions of its employees that it will not deliver and install the Goods and/or Services in accordance with these Terms and Conditions or the Purchase Order, Averna may, at its

option, exercise any or all of the following options: (i) require Supplier to deliver the work in progress using priority freight delivery (with all incremental freight charges at Supplier's expense) and provide Averna with all relevant design, drawings, software, documentation and anything else required for Averna to complete the Goods and/or Services at Supplier's sole cost; (ii) purchase and install substitute goods from a third party and hold Supplier accountable for the difference in price paid for substitute Goods and/or Services, as well as all amounts paid for shipping, insurance, handling, installation and any taxes or duties; and (iii) all other remedies provided at law, in equity, or under these Terms and Conditions. **If the Goods purchased by Averna include software, whether off the shelf or custom developed, Supplier shall provide Averna with a list of all open-source software that is used.**

- e. Supplier shall indemnify Averna against any losses, claims, damages, and reasonable costs directly attributable to Supplier's failure to meet the delivery date.

5. Inspection; Acceptance and Rejection.

- a. All Goods and/or Services are subject to inspection and testing by Averna.
- b. Averna may reject all or any portion of the Goods and/or Services if it determines the Goods and/or Services are nonconforming or defective. Goods and/or Services found to be defective upon Averna's inspection are to be returned at Supplier's expense. Payment for any Goods and/or Services shall not be deemed acceptance.
- c. If Averna rejects any portion of the Goods and/or Services, Averna has the right, at the option of Averna and without limiting any other rights or remedies which may be available to Averna at law or in equity, to: (a) rescind the Purchase Order in its entirety and obtain a full refund for the Goods and/or Services by Supplier; (b) accept the Goods and/or Services at a reasonably reduced price; (c) proceed with the repair or replacement of the Goods and/or Services by a third party at Supplier's expense; or (d) reject the Goods and/or Services and require prompt repair or replacement of the rejected Goods and/or Services.
- d. If Averna requires repair or replacement of the Goods and/or Services, Supplier shall, at its expense, promptly repair and replace such Goods and/or Services and pay for all related expenses, including without limitation labor and materials applied to or used on the nonconforming or defective Goods, inspection, sorting, removal, and transportation charges for the return of defective Goods and the delivery of repaired or replacement Goods and/or Services.
- e. If Supplier fails to timely deliver replacement Goods and/or Services, Averna may replace them with Goods and/or Services from a third party and charge Supplier the cost thereof and terminate this Purchase Order for cause.
- f. Any inspection or other action by Averna under this section shall not reduce or otherwise affect Supplier's obligations under the Purchase Order, and Averna shall have the right to conduct further inspections after Supplier has carried out its remedial actions

6. Packaging and Shipping Instructions.

- a. Unless the parties specifically agree to the contrary in writing, Supplier is responsible for shipping, including related costs and logistics, as well as duties and other custom charges, to the delivery location indicated in the Purchase Order.
- b. Goods must be properly packed and labeled in accordance with Applicable Laws and standards. Supplier shall use suitable containers to permit safe transportation and handling, with each container and its associated packing sheets labeled and marked to identify the contents without opening.
- c. All electrostatic discharge sensitive devices shall be packaged and handled to preclude damage by electrostatic discharge. Packaging shall be properly and clearly marked to indicate contents are subject to electrostatic damage.
- d. Supplier assumes all freight costs, fines, and fees caused by its noncompliance with the Purchase Order and Averna's written instructions.

7. Price and Payment Terms.

- a. Supplier must ensure that invoices are issued to the Averna entity on the Purchase Order.
- b. No increase in the price is effective without the prior written consent of Averna. Averna will pay undisputed invoices, in the currency specified in the Purchase Order, sixty (60) days after the date of receipt.
- c. Unless the parties specifically agree to the contrary in writing, the prices for the Goods and/or Services include all packaging, delivery, transportation and importation costs, customs duties and fees, and applicable taxes, including, without limitation, VAT.
- d. Averna may set off or deduct from any amount due and owing by it to the Supplier any amounts or compensation which Averna, in good faith, believes are due and owing by the Supplier to Averna.

8. Title and Risk of Loss. Supplier assumes all risk of loss or damage to the Goods until the receipt and acceptance of the Goods by Averna at the delivery location specified in the Purchase Order. Title shall pass to Averna upon acceptance.

9. Warranties.

- a. By accepting the purchase order of Averna, Supplier represents and warrants that for a period of twenty-four (24) months from the delivery date, the Goods will: (i) be free from any defects in workmanship, material and design; (ii) strictly conform to the applicable specifications; (iii) be of merchantable quality and fit for their intended purpose; (iv) be newly manufactured; (v) be free and clear of all liens, security interests, or other encumbrances; (vi) not infringe or misappropriate any third party's intellectual property rights; and (vii) be compliant with all Applicable Laws and standards.

- b. Supplier warrants that it shall perform the services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under these Terms and Conditions or the Purchase Order. These warranties shall survive delivery, inspection, acceptance, or payment of or for the Goods and/or Services.
 - c. Supplier assigns and passes through to Averna any third-party manufacturers and licensors' warranties and indemnities for the Goods and/or Services. Supplier acknowledges and agrees that Averna may pass on to the ultimate buyer of the Goods and/or Services the warranty provided for herein.
 - d. **The warranties set forth in this section are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Averna's discovery of the noncompliance with the foregoing warranties.**
10. **Indemnification.** Supplier shall indemnify and hold harmless Averna, its affiliates, and their respective directors, officers, employees, agents, representatives, shareholders, customers, successors, and permitted assigns (collectively, the "**Indemnified Parties**") from and against all losses, damages, liability, actions, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' and other professional fees and other expenses of litigation) suffered, incurred or sustained by, or asserted against, Indemnified Parties based upon or relating to: (i) any inaccuracy or misrepresentation made by Supplier; (ii) a breach of warranty or any terms of the purchase order, or non-fulfilment of any of the covenants to be performed by Supplier pursuant to these Terms and Conditions; (iii) any infringement or alleged infringement by the Goods and/or Services of a third party's intellectual property rights; (iv) the negligence or willful misconduct of Supplier or its employees or contractors; (v) personal injury, including death, or property damage sustained by a third party resulting from or arising out of an act or omission of Supplier or its employees or contractors in fulfillment of these Terms and Conditions or the Purchase Order or (v) any failure by Supplier to comply with any Applicable Laws or Averna codes and/or policies, in the performance of its obligations under these Terms and Conditions.
11. **Insurance.**
- a. Supplier must have in place sufficient insurance policies to cover its potential liability under these Terms and Conditions including but not limited to all risk and product liability insurance and professional liability insurance.
 - b. Any claims-made coverage must continue for a minimum of two (2) years after the Goods are delivered and accepted under these Terms and Conditions.
 - c. Upon request, Supplier will provide Averna with evidence of the adequacy of such insurances. If Supplier fails to maintain insurance required by this section or to furnish evidence of the adequacy of said insurance, Averna may terminate these Terms and Conditions for cause.

12. Intellectual Property. All molds, dies, jigs and other hardware as well as drawings, design, materials, data, equipment, software programs, source codes or other intellectual property that Averna furnishes and/or consigns to Supplier or pays for shall (a) remain the property of Averna; (b) be used only for making the Goods or performing the Services for Averna; (c) be plainly marked or otherwise adequately identified by Supplier as Averna's property and be safely stored separate and apart from Supplier's property; (d) be insured by Supplier at replacement value against all risks with loss payable to Averna; and (e) shall be returned to Averna in the same condition as originally received or manufactured, reasonable wear and tear excepted. The disposition of same, other than a return to Averna, is to be made only on written instructions of Averna.

13. Confidential Information. Supplier undertakes for itself, its employees, contractors and subcontractors, not to, at any time either during these Terms and Conditions or after termination of these Terms and Conditions, either directly or indirectly, without prior written consent of Averna: (a) disclose or permit the disclosure of, the Confidential Information to any person other than required to fulfill the purchase order of Averna; or (b) use or permit the use of the Confidential Information to compete with Averna, or in any manner which may injure or cause loss to Averna or its customers. Supplier acknowledges that in the event of unauthorized disclosure by Supplier or its employees, Averna may seek appropriate equitable or injunctive relief in addition to whatever other remedies it might have at law.

14. License.
 - a. To the extent drawings and specifications are furnished by Averna, all the Goods and/or Services ordered are to be manufactured or supplied strictly in accordance with such drawings and specifications.
 - b. Supplier shall hold Averna, its customers and users of its Goods and/or Services, harmless from liability or suit of any nature, including costs and expenses, arising from the manufacture, use or sale of any invention in the articles ordered except to the extent that any such liability or suit shall have arisen because of Supplier's manufacture of articles of original design of Averna and made by Supplier in accordance with specifications and drawings which are furnished herewith by Averna.
 - c. Supplier agrees to grant and hereby grants to Averna a royalty-free, non-exclusive, and irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, any copyrighted or copyrightable material incorporated in or supplied or intended to be supplied as a supplement with the Goods and/or Services ordered. Supplier further agrees to grant and hereby grants to Averna a royalty-free, non-exclusive, and irrevocable license to make, have made, use and sell, any improvement in the Goods and/or Services made or introduced by Averna in its work.

15. Personal Data Protection. Where Supplier has access to, collects, stores or otherwise processes Personal Data from or on behalf of Averna, including, as the case may be, Personal Data from

customers of Averna, in connection with its supply of Goods and/or Services, including any data that may be generated by the Supplier, Supplier shall agree to execute a Data Processing Agreement with Averna in accordance with applicable data privacy laws. “**Personal Data**” shall have the meaning ascribed to it in Averna’s [Supplier Privacy Engagement](#).

16. Compliance with Laws and Guidelines.

- a. Supplier shall comply with all Applicable Laws.
- b. Supplier agrees to comply with all applicable export and reexport control laws and regulations. Supplier covenants that it shall not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology to any country (or any individual national thereof) subject to antiterrorism controls, sanctions or embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States. Supplier shall cooperate with Averna regarding any export classification or related information to satisfy any Applicable Laws.
- c. Supplier shall not provide to, or offer any representative, officer, director or employee of Averna, or any member of such person’s family, any favors, gifts, gratuities or favorable treatment for the purpose of securing a purchase order or any future business opportunities from Averna.
- d. Supplier agrees to provide, upon request from Averna, all reasonably necessary documentation to demonstrate compliance with Applicable Laws governing the use of hazardous substances. Such documentation shall include detailed verification of the material composition, including the quantity of each substance used, for any Goods and/or any process involved in the manufacturing, assembly, use, maintenance, or repair of the Goods.

17. Modifications and Changes.

- a. Averna reserves the right at any time to modify its purchase orders by making changes in specifications to any Goods and/or Services covered by the Purchase Order, in which case an equitable adjustment shall be negotiated reasonably and promptly, and the order shall be modified in writing accordingly.
- b. Supplier shall not make any changes to the Goods and/or Services without the prior written consent of Averna.
- c. Supplier shall promptly notify Averna of any changes to the processes used to produce the Goods that in any way affect the electrical or mechanical characteristics of the Goods, any changes to the manufacturing location, or any end-of-life status.

18. Termination.

- a. Averna may, at any time, cancel any undelivered orders in whole or in part or cancel these Terms and Conditions or the Purchase Order for any reason and without liability, upon electronic notice to Supplier.

- b. Termination shall not relieve Averna of its payment obligations for any Goods and/or Services delivered prior to termination.
 - c. In the event Averna terminates these Terms and Conditions or the Purchase Order due to a default, such as a breach of warranty or any provision of these Terms and Conditions by Supplier, or in the event Supplier becomes insolvent, files a petition for bankruptcy, or is subject to proceedings related to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, Supplier shall be responsible for any damages incurred by Averna as a result of the default which gave rise to the termination.
 - d. Termination of the Terms and Conditions or the Purchase Order will not prejudice any other rights or remedies under these Terms and Conditions or the Purchase Order.
19. Return of Goods and/or Services. For non-customized Goods, Averna may return Goods which are not delivered on time or surplus to its needs without penalty if returned within thirty (30) days of the date of receipt. Goods may be returned outside this delay but will be subject to a reasonable restocking fee as mutually agreed to between the parties, which shall not exceed fifty percent (15%). All Goods returned in the case of breach of warranty or these Terms and Conditions will be at Supplier's expense.
20. Relationship Between the Parties. Averna and Supplier are independent parties. The transaction entered into between the parties pursuant to these Terms and Conditions does not create any partnership, joint venture, or agency between the parties, and nothing in these Terms and Conditions shall be construed as creating any such relationship.
21. Most Favored Terms. If Supplier offers more favorable terms or conditions to any other company for similar Goods and/or Services, Supplier will concurrently extend equal or better terms and conditions to Averna, and the present Terms and Conditions shall automatically be deemed amended to reflect those terms. Any amounts charged in excess in violation of this provision will be refunded or credited to Averna.
22. Audit. Averna may inspect, during business hours upon giving a minimum of two (2) days' notice, any raw materials, manufacturing process, packaging, batching, recording or transport facilities or motor vehicles used in forming, manufacturing, handling, packaging or transporting the Goods and/or Services, and may audit Supplier's records to verify compliance with these Terms and Conditions.
23. Waiver. Failure or omission by Averna to enforce or require strict or timely compliance with any provision of these Terms and Conditions will not affect or impair that provision, or Averna's right to avail itself of the remedies it may have in respect of any breach of a provision, in any way.

24. Governing Law and Jurisdiction.

- a. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions, or any Goods and/or Services sold under these Terms and Conditions.
- b. These Terms and Conditions will be governed by and construed and enforced under the laws of the state or country where Averna is registered, without reference to any choice of law rules or principles which would otherwise dictate application of another state's or country's laws.
- c. The Parties select as the exclusive forum for any dispute related to these Terms and Conditions, and irrevocably consent to the exclusive jurisdiction and venue of the courts of the state and country where Averna is registered in accordance with the following table:

<u>Entity Issuing the Purchase Order</u>	<u>Governing Law</u>	<u>Exclusive Jurisdiction of Courts</u>
Averna Technologies Inc.	Quebec, Canada	Montreal, Quebec, Canada
Averna Test Systems Inc.	North Carolina, USA	Charlotte, North Carolina, USA
Averna NV	Belgium	Hasselt, Belgium
Averna GmbH	Germany	Landau, Germany
Averna sp. z. o.o	Poland	Wroclaw, Poland
Averna Guadalajara SA de CV	Mexico	Guadalajara, Mexico
Averna a.s.	Czech Republic	Prague, Czech Republic
Averna (Suzhou) Test Equipment Limited	China	Suzhou, China
Averna (Suzhou) Trading Limited	China	Suzhou, China
Averna Japan G.K.	Japan	Tokyo, Japan
Averna Test (India) Private Limited	India	Trivandrum, India
Averna Vietnam Company Limited	Vietnam	Ho Chi Minh City, Vietnam

25. Assignment. Supplier shall not assign, transfer, delegate, or sub-contract any of its rights or obligations under these Terms and Conditions without the prior written consent of Averna. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder.

26. Force Majeure. Neither party shall be in default if failure to perform any obligation hereunder is caused solely by a Force Majeure Event. The delayed Party's time for performance will be excused for the duration of the Force Majeure Event. Averna may, however, terminate the Purchase Order if

Supplier fails to provide any remedy or solution for the situation or if the Force Majeure Event lasts longer than thirty (30) days. “**Force Majeure Event**” are events that are unforeseeable, unavoidable, outside of the reasonable control of the parties, and have the effect of rendering performance of contractual obligations impossible. Supply chain issues will not qualify as a Force Majeure Event.

27. Severability. If any part of these Terms and Conditions is invalid, illegal, or unenforceable, the rest of the Terms and Conditions will remain in effect. If the Purchase Order cannot be completed without the invalid or voided terms, the parties agree to replace them by one that serves the purpose of the Purchase Order as closely as possible.

28. Survival. Provisions of these Terms and Conditions which by their nature should apply beyond termination will remain in force after any termination or expiration of these Terms and Conditions unless Averna and Supplier expressly supersede them by written agreement.