

## General Terms and Conditions of Purchase

These General Purchase Conditions (GCP) shall exclusively apply to all legal relationships with our suppliers, in particular for all inquiries and orders unless expressly agreed otherwise in writing by an authorized representative of our company. These GCP are a translation of the German version, and even though every effort has been made to make an accurate translation, in case of a discrepancy the German version shall prevail.

All supplier's terms and conditions shall explicitly be rejected hereby. Such supplier's terms and conditions shall not be valid with respect to our contractual relations with a supplier, irrespective of whether they contradict these GCP in part or in full or contain regulations that go above and beyond them.

By accepting our order, the supplier explicitly accepts the exclusive application of these GCP. Should the supplier wish to reject these GCP, the supplier shall immediately notify us in writing, in which case we may cancel our order without the supplier having any claims against us, and lacking such immediate notification any desired rejection shall be void.

These GCP shall also apply to all future contractual relations with the supplier, unless otherwise agreed upon in writing.

### 1. Orders

1.1 Orders and call-offs as well as changes and/or amendments shall be binding only if placed in writing and signed or executed by an authorized representative. Any orders, changes and/or amendments made orally or by phone, email or telefax shall only be binding if confirmed in writing and signed or executed by an authorized representative, unless the order or notice by email or telefax contains a statement that no written order or confirmation will follow.

1.2 Each order shall be validly counter-signed in writing on the „confirmation of the order“ form which is enclosed in the order and shall state the price, the binding delivery time, the acceptance of these GCP and the purchase order number. The purchase order number

shall be quoted on all documents. In case the supplier does not explicitly accept the order within 8 days following receipt, the order shall be deemed unconditionally accepted without purchase order confirmation.

1.3 Any transfer of our order, in full or in part, is subject to our consent in writing in advance.

1.4 The supplier shall provide to us in writing and electronically all data, drawings, and other technical information required or useful for the inspection, use, maintenance, repair or resale of its delivery or offer for our permanent use and free of extra charge. All machines, components and materials shall be engineered and delivered in accordance with EU directives in the metric system and with physical parameters that are technically possible and suitable for the intended use.

1.5 Cost estimates shall be binding for the supplier and free of charge.

1.6 Unless otherwise agreed upon in writing, these GCP shall be deemed an integral part of any framework contracts.

## 2. Prices and Packing

2.1 All agreed prices are fixed prices. Any excess costs may only be charged to us if accepted by us in writing in advance. If the supplier has assumed the obligation of assembly or installation, it shall bear all the required costs. The supplier confirms it has considered all circumstances with respect to pricing.

2.2 If an order does not state prices, the supplier shall provide them in the „purchase order confirmation“ at the latest. We reserve the right to final acceptance of the price.

2.3 The goods shall be contained in customary, appropriate and proper packaging, so that in particular all laws shall be complied with, for which the supplier shall be liable. Packaging shall be deemed included in the price. All packaging items including crates shall be transferred into our ownership without further written agreement.

2.4 The supplier undertakes to transmit all necessary information concerning the packaging within 7 days after being so requested by us, so that proper disposal is ensured, without prejudice to our right to return the packaging items to the supplier at supplier's risk and expense.

## 3. Delivery times

3.1 All delivery times are set dates unless otherwise stipulated explicitly in writing. In case delivery periods are agreed, these shall begin on the date of dispatch of the order. Deliveries shall be effected within our office hours.

3.2 In case of earlier deliveries or deliveries in part, about which we shall be informed in time and which require our written approval, the payment period shall only begin upon the originally agreed date of delivery. All costs connected with an earlier delivery date shall be borne by the supplier.

3.3 In case of any foreseeable delays of delivery the supplier shall inform us immediately and state the reasons therefore.

3.4 Any consent to earlier or delayed deliveries or deliveries in part which were originally not agreed shall not constitute a waiver of any rights or claims in this respect.

#### **4. Delay**

4.1 All legal regulations in regard to delay shall apply, unless otherwise stipulated herein. We shall not be obligated to advise the supplier of a delay and its consequences.

4.2 The above shall also apply if deliveries in part have been accepted without any reservations.

4.3 Irrespective of any negligence of the supplier in case of a delay we shall be entitled to a contractual penalty in the amount of 1 percent of the total order value per commenced week of delay until full performance is effected. Such contractual penalty shall be limited with an amount of 20 percent of the total order value. Such contractual penalty shall not be subject to mitigation by court. The contractual penalty shall be without prejudice to any excess claims.

4.4 The unconditional acceptance of delayed deliveries or performance shall not constitute any waiver in regard to any and all claims and demands available to us in connection therewith.

#### **5. Delivery**

5.1 Place of performance for delivery and place of transfer of risks and costs shall be at our plant in Berndorf or any other place disclosed to the supplier. Delivery shall be effected DDP (INCOTERMS 2010). The shipping instructions indicated in the purchase order including our factory standards shall be binding, and the supplier shall obtain insurance adequately covering all risks in connection with transport, storage, and installation including start-up and test run. The supplier shall be liable for any and all damages, costs, etc. in case of default.

5.2 Should the supplier use any third parties it shall procure that our shipping instructions as of that date are strictly observed. The supplier shall be liable for any and all damages, costs, etc. in case of default.

5.3 A delivery note with our purchase order number shall be included with the consignment. C.O.D. parcels will only be accepted if stipulated beforehand in writing. In case of crossborder consignments at least two invoices shall be included with the shipping documents for customs purposes. If so requested, the supplier undertakes to issue a statement on origin of the goods complying with applicable customs laws.

Such declaration shall be delivered upon delivery of the goods, or the first part of the delivery, at the latest.

5.4 In case collection of goods was explicitly stipulated, the supplier undertakes to store the contractual goods free of charge for a period of 4 weeks from the notification of the readiness for shipment, and thereafter the supplier shall store the goods against a locally customary fee. In such cases the supplier shall bear all risks until delivery to us or to our carrier.

## **6. Warranty**

6.1 All legal regulations in regard to defects shall apply, unless otherwise stipulated herein.

6.2 Declarations by the supplier which would limit or repeal its statutory liability shall be invalid.

6.3 The warranty period for any defects shall be 3 years. If the supplier does not prove otherwise, every defect appearing within this statute of limitation shall be deemed in existence at the time of delivery. Deliveries or services due to warranty shall extend the original warranty period accordingly.

6.4 The supplier acknowledges that goods will only be inspected upon their further use. A notice of defects transmitted within a reasonable period thereafter shall be considered timely, except in the case of defects which are obvious upon delivery without any examination in which case a notice of defects must be filed without delay. A notice of defects shall interrupt the warranty period for all of our claims.

6.5 All defects shall be remedied without delay at our sole option by repair or replacement, whereby all connected costs shall be borne by the supplier; or without granting a grace period and irrespective of the kind of defect by a reduction of price or rescission of contract, without prejudice to any other claims (e.g. for damages).

6.6 Repair or replacement shall be effected where the goods are situated at the cost of the supplier; if the goods need to be transported to a different place, all costs connected therewith shall be borne by the supplier.

6.7 In case the supplier does not completely fulfill its obligation to repair or replace defective goods, we shall be entitled to effect the necessary repair or replacement at our own option and at the expense of the supplier, without prejudice to any other claims due to delayed repair or replacement. Further we may, until delivery is made free of defects, or until repair or replacement, withhold our payments and any other performance, and may set off with any of our claims for performance or warranty and any of our connected claims for refund of costs, expenses, losses or damages or similar claims.

6.8 Specifications concerning material, function, features, properties and/or usability of the goods are deemed explicitly guaranteed by the supplier, including if contained in general information material. Also the supplier warrants in particular that the ordered goods are CE-certified (as far as such a certification is applicable), are of first class quality, state of the art in design, manufacturing and performance, completely functional and unencumbered by any rights and claims by third parties.

6.9 Regarding any defects in title, particularly including intellectual property rights of third parties or claims or procedures by authorities, the supplier holds harmless and indemnifies us as well as our customers from and against all claims. Furthermore the supplier undertakes to compensate us for all costs and expenses in connection with a reasonable legal defense.

6.10 Should we recall any of the goods we produced and/or sold, should our price have been reduced or should we have been called upon in any other way because of defects arising from goods or services delivered by the supplier, we are at all events entitled to any and all recourse against the supplier. The warranty period notwithstanding, such recourse may be made for at least one year after satisfying our customer's warranty claim.

6.11 The assertion of claims shall not be excluded because of treatment or processing or resale of the delivered goods.

6.12 The supplier shall be liable without limitation for all damages, in particular consequential losses, which we suffer due to a defect.

6.13 The supplier undertakes to ensure supply of spare parts and repairs for a period of at least 15 years after a contractual delivery.

## **7. Guarantee, Product Liability**

7.1 Without prejudice to and in addition to the warranty of the supplier, the supplier guarantees that no defects will arise within 3 years, if the goods are used as intended.

7.2 Clauses 6.4 to 6.12 shall apply mutatis mutandis.

7.3 The supplier undertakes to hold harmless and indemnify us from and against any and all claims based on product liability, irrespective of whether such claims can be traced back to the delivered goods completely or only in part. Such indemnification shall include any costs arising for the prevention of damages and loss (for example recalls). If so requested by us, the supplier shall insure the product liability risk with adequate coverage, provide evidence for such insurance, and assign such insurance proceeds to our benefit.

## **8. Intellectual Property Rights**

8.1 Any intellectual property rights in connection with the contract goods, components, services and processes (including patents, brands, designs, copyrights, know-how and commercial, technical and process and other information, and any inventions and other developments in connection with the contract) which arise in connection with or following performance of the contract or in the course of compiling the supplier's offer (in the latter case irrespective of a conclusion of a contract) shall be notified to us and shall be exclusively and without restriction our property, and the supplier shall not have any rights with respect thereto, and in particular the supplier shall not have any license. We shall have the exclusive and unrestricted right to use or otherwise exploit such rights and to register or file such rights or save or protect them otherwise, and to benefit from all rights available under intellectual property or other protection. We reserve all rights in connection with prior use, and any rights of the supplier or of a third party in connection with prior use shall be excluded. Further we shall have the exclusive, unrestricted, worldwide and royalty-free right of use in respect of all creations arising in connection with the performance of the contract for an unlimited period. All documents in connection with our requests or orders as well as samples, materials, plans or other items provided and any rights in connection therewith shall remain our property. Documents or other items shall be provided by us without any warranty or other liability on our side.

8.2 If intellectual property rights or other rights of the supplier or third parties could hinder us or our customers in using the products, components or processes, the supplier shall hereby grant us the exclusive, unrestricted, worldwide and royalty-free right of shared use for an unlimited period which may be extended to all of our customers and suppliers, and shall procure that such right shall be granted by third parties.

8.3 The supplier warrants that it is not aware, and could not be aware, of any rights of third parties, worldwide, that could hinder the use or resale of the contract products, components and/or processes.

8.4 The supplier undertakes to immediately notify us of its own or third party rights, published or unpublished, to or in connection with the delivery, and to hold harmless and indemnify us from and against any and all claims in the event of an infringement of third party rights. This indemnification shall include the reimbursement of attorney's fees, costs of legal defense and other costs.

## 9. Confidentiality

The supplier shall not at any time, directly or indirectly, use any of our information or disclose it to any third party, except as required by the ordinary and usual development, manufacturing or provision of the delivery. The supplier shall take all necessary precautions to maintain our information in confidence under all circumstances, including but without limitation procuring that where information is disclosed to employees or other persons, the disclosure shall be made only under a

confidentiality obligation and only for the direct purpose of their activity in connection with the performance of the supplier. Upon termination of the agreement, termination of the cooperation, or termination of the delivery or otherwise upon our request, the supplier shall return to us information or other items provided and permanently delete electronic information; the supplier shall not have any right of retention. The supplier shall only disclose, or promote with, its business relationship with us subject to our prior written consent. This clause shall remain effective for an indefinite period of time including after termination of the contract.

## 10. Invoices

10.1 All invoices shall be submitted to us separately in three copies and shall contain all data as required by § 11 UStG (VAT Act) and any other laws. Invoices attached to the goods shall not be deemed duly received. Furthermore invoices shall only be deemed submitted in due form if they include the purchase order number, the date of the order, the delivery note number, the delivery date and our and the supplier's UID number, and in case of advance orders by phone the name of the person placing the order.

10.2 Invoices not duly submitted, erroneously addressed or containing factual or calculative mistakes shall not trigger maturity before their agreed correction and may be rejected by us at any time.

10.3 Payments shall not be deemed acceptance of fulfillment of the respective contract and thus shall not constitute a waiver of any claims based on warranty, guarantee, damages, or similar grounds.

## 11. Payment

11.1 All invoices duly submitted shall be paid at our discretion by bank transfer or check within 30 days from the beginning of the payment period with a 3% discount, or within 45 days with a 2% discount, or within 60 days without discount. The timeliness of payments shall be determined by the date of the transfer order or in regard to any other usual payment method by the date of the deposit.

11.2 Objections to the invoice or the delivery shall entitle us to withhold payment and shall delay maturity. Also the period relevant for the discount shall only begin after delivery under the contract has been fully completed and after receipt of a duly issued invoice. Accepted payments shall be accounted for according to our instructions.

11.3 Should we not pay timely, the supplier shall not be entitled to charge interest higher than 2 percentage points over the 3 month EURIBOR, any compound interest, or costs for reminders or collection (except the lump sum as provided in sec 458 of the Act on Business Laws).

11.4 In cases of force majeure, or in case an import or export permit or other permit or license cannot be obtained, there shall not be any claims against us due to any delay.

## **12. Duration of contract, Termination**

12.1 Without prejudice to our right to withdraw from a contract due to default, we shall be entitled in particular to rescind a contract with immediate effect in the event that a supplier or a representative of the supplier has materially breached the contract, or assets of the supplier become subject to insolvency proceedings, or if an insolvency filing has been rejected due to a lack of sufficient assets for the proceedings (the right of rescission may be exercised for an indefinite period until full performance of the contract), or if the supplier suspends its payments or proposes a settlement or moratorium to all creditors or to a number of creditors or is, or is threatened to become, insolvent, or facts subsist which obviously render a timely performance of the contract impossible (e.g. force majeure). We may further withhold payment or other performance if the supplier does not fully and timely perform all of its obligations.

12.2 If we rescind the contract, the supplier shall not be entitled to any claims, in particular to consideration and/or damages, unless the supplier's performance can be utilized by us at least in part.

## **13. Miscellaneous**

13.1 We shall be entitled to inspection and ongoing examination of the production, and to the rejection of defective parts during production.

13.2 The supplier shall waive its right to retention of title in regard to the goods or any parts thereof. The acceptance of goods delivered under retention of title as well as the signing of invoices or delivery notes containing a retention of title clause shall not be deemed valid, and all deliveries shall be deemed effected without being subject to retention of title.

13.3 Any challenge of a contract by the supplier due to error or gross disparity shall be excluded.

13.4 If individual provisions of these GCP are invalid or unenforceable, either as a whole or in part, all other provisions of these GCP shall remain legally binding. The supplier agrees that we shall replace such invalid or unenforceable provisions with valid and enforceable and economically and legally equivalent provisions. The same applies to possible omissions.

13.5 Our liability in case there is no fault and in case of ordinary negligence and simple gross negligence, and for representatives, indirect damages and consequential losses, other losses, lost profits, and other damages and costs shall be



excluded. The supplier shall comply with our IT-Directive when using our IT and shall indemnify us against, and hold us harmless from, any claims and legal actions in connection with the illegal use of intellectual property.

13.6 Any statement including any amendment to these GCP shall be made in writing and signed or executed by an authorized representative and shall be made in the English or German language.

13.7 Clauses 8, 9, 13 and 15 shall remain effective after termination of the contract, notwithstanding any other provisions which by nature shall remain effective.

#### **14. Force majeure**

In case of force majeure, labour disputes, business disruptions, unrests, action by an authority or any other event beyond our control, e.g. in case an import or export permit or other permit or license cannot be obtained, irrespective of whether affecting us or our customer, we shall be entitled - without prejudice to further rights and claims - to terminate the contract in full or in part, to the extent these circumstances considerably reduce our demand and are not entirely of a short term nature, whereby the supplier shall not have any claims therefrom, in particular for damages.

#### **15. Jurisdiction, applicable law**

15.1 Any dispute from or in connection with our contractual relations with the supplier shall be finally settled by the courts of law competent for 1010 Vienna (Inner City), Austria, and we may refer the case to other courts of law having jurisdiction over the supplier.

15.2 All legal relations with the supplier shall be governed by and shall be construed in accordance with Austrian substantive law without giving effect to the principles of conflict of laws thereof. Application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) shall be excluded. The INCOTERMS 2010 as effective at the time of contract conclusion shall apply, unless otherwise stated in the contract or in these GCP.