

81000 TGE Company Procedures

General Purchase Conditions

15	18.05.2018	Issued for Use	RK3	RC	WP
14	28.03.2018	Issued for Use	BR1	MW1	MW1
13	15.03.2017	Issued for Use	BR1	MW1	MW1
12	24.07.2016	Issued for Use	BR1	MW1	MW1
11	28.01.2016	Issued for Use	BR1	MW1	MW1
10	17.03.2014	Issued for Use	BB2	MP4	MW1
9	24.08.2012	Issued for Use	MP4	MW1	WP
8	08.05.2011	Issued for Use	BR1	MW1	SL
7	18.04.2011	Issued for Use	BR1	MW1	SL
6	30.11.2007	Issued for Use	OF	SCH	OF
Rev.	Date	Subject of revision	Author	Checked	Validated

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General Purchase Conditions

1. Scope of Application

- 1.1 The following general purchase conditions of the purchaser are part of and apply exclusively to purchaser's purchase order.
- 1.2 The contractor's general terms and conditions or any other condition stated in the contractor's order confirmation, delivery note or elsewhere, which deviate from or extend these general purchase conditions or the rest of the purchaser's purchase order are expressly rejected and will only apply insofar as the purchaser consents to their validity in writing.

2. General Provisions

- 2.1 All documents attached to the purchase order or referred to therein form an integral part of the purchase order. In case of contradicting provisions, they will apply in the following order of precedence:
 - a) the main text of the purchase order,
 - b) all appendices to the purchase order with the exception of these general purchase conditions and contractor's technical documents,
 - c) these general purchase conditions,
 - d) contractor's offer.
- 2.2 Purchase orders are binding only, if they are placed by the purchaser in writing; verbal agreements – including subsequent amendments and additions to these general purchase conditions – must be confirmed in writing by the purchaser to become valid.
- 2.3 Previous agreements are not legally binding, unless specific reference to such agreement(s) is made in the purchase order.
- 2.4 Documents used by the contractor in business dealings with the purchaser must indicate at least: purchase order number, commission order number, plant, place of receipt, full article text/item description, volumes and volume units as well as VAT ID (for imports from the EU).
- 2.5 On-site supervisors and other personnel of the purchaser at the construction site are not authorized to enter into any agreement or to agree to any amendment or modification of agreement(s) with the contractor, unless they have a respective power of attorney.

3. Price, Payment and Invoicing

- 3.1 The agreed prices and rates are fixed, represent full compensation for the supplies/services and include, with the exception of value added tax, all applicable taxes. Any additional claims or price increase of any kind are excluded, unless mandatory law requires otherwise.
- 3.2 The costs for the contractor's visits and for the preparation of offers and cost estimates are not reimbursable.
- 3.3 For the period of their validity, cost estimates form a binding basis for resultant purchase orders.
- 3.4 In case of services ordered on a reimbursable basis, the agreed rates are all-in including man-hours worked, meals, special clothing, accommodation, travel costs etc.
- 3.5 The contractor will issue all invoices together with the documentation required in the purchase order to the purchaser's accounting department in accordance with German accounting standards.

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- 3.6 The invoice must include the purchase order number, the project number, the contractor's SWIFT number and IBAN, the purchaser's VAT number and a reference to the relevant positions of the purchase order. The value added tax must be shown, if applicable, separately. In case of reimbursable services, all invoices will be accompanied by a time sheet signed by the purchaser's site manager.
- 3.7 An undisputed invoice will be paid by the purchaser within 45 days after receipt of correct invoice, but in any case not before receipt of all relevant documentation by the purchaser.
- 3.8 The purchaser will effect payments by electronic bank transfer to the contractor's bank account as notified to the purchaser.
- 3.9 The purchaser reserves the right to make payment only after the completion of the supplies/services.

4. Scope of Supply/Service

The scope of supply/service comprises in particular the following:

- 4.1 The contractor will transfer to the purchaser possession and ownership of the supplies, which include all technical documents (also for sub-suppliers) and other documents needed for manufacture, maintenance and operation of the supplies. Said technical documents must be in German or English language and based on the international SI standard system.
- 4.2 The contractor will transfer all rights of use needed for the use of the supplies by the purchaser or third parties, taking into consideration any patents, supplementary protection certificates, brands, registered designs. This includes particularly the granting of a royalty-free, perpetual, irrevocable, non-exclusive and transferable license to use, reproduce, modify, adapt, create derivative works from and to perform the content of the supplies (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed
- 4.3 The purchaser has the unconditional authority to carry out or have carried out by third parties repairs and modifications to the supplies and also to manufacture spare parts or have them manufactured by third parties.
- 4.4 The scope of supply/service includes all tests, inspections and approvals necessary according to applicable law and technical codes and standards including the measures for the attendance of third parties or the purchaser himself at such tests.
- 4.5 The supplies must be fully functioning, brand new and safe for operation, regardless of whether or not all parts and processing details pertaining to the supplies is listed in the purchase order.
- 4.6 The contractor is solely responsible for ensuring that all planning parameters and other preconditions necessary for the complete and correct fulfilment of his obligations in terms of the supplies/services, including guarantees entered into, are specified in the purchase order. The contractor must promptly and carefully inspect the preconditions and instructions given to him by the purchaser relating e.g. to materials, treatment, processing or sub-vendors with regard to any (technical) mistakes, contradictions or deficiencies of which he must promptly inform the purchaser.
- 4.7 The planning, construction, manufacture and inspection of the supplies including the drafting of technical documentation and the planning and performance of services must, unless otherwise determined in the purchase order, be carried out in accordance with the applicable standards and regulations at the place of use of the plant in their respective newest version and in accordance with the applicable building and security regulations as well as under adherence to the applicable accident prevention and safety regulations. The supplies/services must in any aspect fulfil the requirements of the applicable German and local regulations for technical work equipment, dangerous substances and protection of the environment.

- 4.8 The contractor will supply the technical documentation and immediately revise it as far as required. Any approval or release for use of the contractor's technical documentation by the purchaser does not relieve the contractor of his obligations under the purchase order.
- 4.9 If the scope of supply/service differs from that agreed, the contractor is entitled to additional claims or schedule changes, only if an order modification in the form of a corresponding amendment of the respective purchase order is concluded in writing prior to or during the performance of the purchase order.

5. Quality Assurance Requirements

The contractor guarantees that he will install and maintain a state-of-the art documented quality management system of suitable type and scope (ISO 9001 or equivalent) throughout the entire duration of the purchase order. He will prepare records, in particular of quality inspections, and make these available to the purchaser on request. Where required, all supplies will carry the "CE"-mark.

6. Order Modifications

- 6.1 The contractor must review the latest revisions of documents sent to him by the purchaser and notify the purchaser without undue delay of any contractual impact of the changes in the documents that in his opinion would necessitate an order modification. In absence of the contractor's notification as per above within 14 days after the document transmittal by the purchaser, the latest revision of the document will be deemed accepted by the contractor and he will not be entitled to request an order modification.
- 6.2 During the execution of the purchase order, the purchaser will have the right to request order modifications, as far as such request may be considered as appropriate to effectuate the agreed success.
- 6.3 As far as the purchaser notifies the contractor of a possible order modification, the latter will promptly provide the purchaser in writing with a preliminary estimate report of any effects of such order modification, in particular on the consistency, quality, delivery date or possible additional costs. A description of the work to be performed under such order modification and a detailed time schedule for its execution must be included in the report.
- 6.4 As soon as the parties reach an agreement on the terms of the order modification, the purchaser will lodge a respective order with the contractor.
- 6.5 An order modification will be issued in the form of a purchase order amendment which will include the entire description of the works to be executed and the modified time schedule, contract price and delivery date.
- 6.6 An order modification caused by reasons for which the contractor is responsible, will not entitle him to request changes to the price or to the delivery date.

7. (Intellectual) Property and Copyright

The purchaser retains any legal title and copyright in all pictures, sketches, calculations and other documentation, which the purchaser makes available to the contractor or which the contractor acquires otherwise. Such documents must not be disclosed without the written consent of the purchaser and must only be used for the execution of the purchase order. Any legal title in the technical specifications of the purchase order as well as all drawings, documents, computer programs, models, data carriers and other technical information provided by the purchaser will at all times remain the sole property of the purchaser. Unless necessary for the execution of the purchase order, the contractor must not hold any exploitation rights or licenses.

8. Dates, Delivery and Packaging

- 8.1 The dates agreed with the contractor for the delivery of the supplies and the performance of the services is fixed; time is of the essence (Fixgeschäft). A schedule evidencing the actual manufacturing and delivery status will be made available at all times by the contractor and will be submitted to the purchaser in accordance with the purchase order, however, at least once a calendar month. Acceptance of a late delivery or performance by the purchaser does not contain any waiver of compensation claims.
- 8.2 In case of delivery prior to maturity, the delivered supplies will be stored until maturity at the contractor's cost and risk, if they are not sent back to the contractor. At the purchaser's request, the contractor must however postpone the delivery of supplies free of any additional cost (including storage cost) for the purchaser for up to three months after the date of delivery agreed in the purchase order.
- 8.3 If the contractor is in delay and he cannot prove that he is not responsible for the delay (Verzug), the contractor will pay to the purchaser a penalty amounting to 0.25% of the purchase order value per day of default, but in aggregate maximum 5% of the purchase order value. The purchaser can also declare the reservation of the right to demand the penalty upon final payment.
- 8.4 The contractor is only entitled to partial supplies/services upon the purchaser's written consent. Partial supplies/services are to be marked as such and the quantity of the outstanding supplies/services is to be indicated on the delivery note.
- 8.5 The contractor must adhere to the purchaser's packaging and delivery instructions.
- 8.6 Any delivery will be carried out at the contractor's cost and risk.
- 8.7 Deliveries are made DDP, INCOTERMS 2010, unless agreed otherwise.
- 8.8 The contractor guarantees that he will observe any export restrictions.
- 8.9 All essential high-value components must be photographed by the contractor prior to as well as after packaging. The photos must be submitted to the purchaser together with the shipping documents. The purchaser may reject deliveries without proper shipping documents and/or the required certificates of test, inspection or acceptance and services without the necessary permits etc. for their execution.
- 8.10 All levies, taxes and costs for package, freight and transport to the place of receipt determined by the purchaser are included in the agreed prices. However, the purchaser will bear the additional costs of the contractor resulting from the delivery being made to/service being performed at an address differing from the primarily agreed place of receipt, initiated by the purchaser.
- 8.11 The contractor will pick up all packages without any additional cost for the purchaser. As far as the contractor is entitled to claim the return of the packages necessary for the supply/service, the shipping/service documents need to contain a corresponding indication. In case of a lacking indication, the purchaser will dispose of the packages at the contractor's cost and risk and the latter must not claim the return of the packages.

9. Spare Parts

The contractor guarantees that he will submit a recommendation of and provide spare parts to the purchaser at reasonable prices and subject to the conditions of this purchase order for the start-up and for an operating period of ten years after the end of the guarantee period upon the purchaser's request.

10. Supply of Parts/Materials by Purchaser

- 10.1 The contractor must, immediately upon receipt, inspect the parts and materials provided by the purchaser for the purpose of manufacturing the supplies. These parts and materials will remain the property of the purchaser and must be stored and labelled as his property and must be recorded

separately as well as safeguarded and insured as third-party property by the contractor at his own expense. The contractor already now assigns possible insurance claims to the purchaser.

- 10.2 As far as necessary, the contractor will keep a separate account of the parts and materials supplied and must disclose the contents of such accounts to the purchaser upon request.
- 10.3 Any processing or reshaping of any parts and material supplied by the purchaser will be made on his behalf; the purchaser will be deemed to be manufacturer in terms of § 950 BGB (German Civil Code).
- 10.4 If any material supplied by him is processed, inseparably mixed or joined with other goods not owned by the purchaser, he will obtain joint legal title to the new good in relation to the value of the goods supplied to the other goods at the time of processing, joining or mixing. As far as the processing, joining or mixing is made in a manner that a good of the contractor is to be considered as main good, the contractor will transfer to the purchaser a respective partial joint legal title to such good.

11. Inspections and Tests

- 11.1 The contractor will perform and bear the costs of inspections and tests prescribed or recommended by the applicable codes and standards and the technical specifications of the purchase order with regard to the manufacture and quality of the supplies and provide the necessary facilities and personnel for such inspections and tests.
- 11.2 The purchaser, his agents and the end customer are at any time entitled to carry out at their own costs non-destructive tests (e.g. x-ray and ultra-sound tests) on a random basis.
- 11.3 Further inspections/tests with regard to the manufacture and quality of the subject matter can be requested by the purchaser at any time and will be carried out at his cost.
- 11.4 The purchaser, the end customer and third-party inspectors are entitled to attend any inspection/test. If the contractor has subcontracted certain tasks, he must ensure that the purchaser and the end customer are granted such rights at the sub-contractor's premises.
- 11.5 A record of all inspections/tests will be prepared detailing the inspection/test results and will be signed by the parties.
- 11.6 If defects are found during the course of an inspection/test conducted at the cost of the purchaser, the contractor must reimburse all costs of such inspections/tests.
- 11.7 If an inspection/test becomes necessary due to defects and/or delays found in the manufacture or delivery or incorrect performance of a prior inspection/test which is (also) caused by the contractor's fault, he must bear any costs of the purchaser and the end customer for attending such inspection/test, and the costs for the inspection/test itself.
- 11.8 The contractor must notify the purchaser in writing at least 30 days prior to the date of any inspection/test, which has to be confirmed in writing at least ten days prior to the date of the inspection/test.

12. Acceptance/Handover

- 12.1 Acceptance/Handover of the supplies will be carried out at the place of fulfilment formally by drafting a respective protocol to be signed by both parties. The documentation of the acceptance/handover will be stipulated individually. The implied acceptance set forth in Section 640 paragraph 1 sentence 3 of the German Civil Code (Bürgerliches Gesetzbuch) is excluded.
- 12.2 As far as the purchase order provides for certain operation data with regard to the intended purpose, e.g. power consumption, installation or assembly, the purchaser will only grant acceptance after the successful trial run at the plant.

13. Defects and Liability

- 13.1 The contractor guarantees that the supplies/services have the agreed constitution and serve the agreed purpose.
- 13.2 § 377 HGB (German Commercial Code) does not apply.
- 13.3 In case of subsequent fulfilment, the purchaser will be entitled to claim, at his option, repair or delivery of new supplies.
- 13.4 The right to demand subsequent fulfilment already exists prior to completion.
- 13.5 Notwithstanding any further remedy at law, contractor must compensate purchaser for purchaser's expenditure of work that becomes necessary due to contractor's breach of his contractual duties according to the man-hour rates applicable at the time of contractor's breach plus a fee of 10 %.
- 13.6 In the event of an emergency where, due to particular urgency, it is no longer possible to inform the contractor of the defect and to set him a deadline for redress, the purchaser will be entitled to eliminate the defect(s) by himself at the contractor's full risk and expense.
- 13.7 The limitation period for defect claims is three years; longer statutory limitation periods remain unaffected by this. The limitation period for any supplies which cannot be in operation during the revision of the defect or during replacement and remedying of the defect will be extended by the period during which such item cannot be operated. For newly supplied or repaired parts, the period of limitation starts anew.

14. Third-Party Rights

- 14.1 The contractor guarantees that the supply and its operation at the place of use do not infringe any third party's rights.
- 14.2 The purchaser is entitled to request from the respective holder of rights the granting of a right to use the supply.

15. Prohibition of Advertising, Secrecy, Confidentiality

- 15.1 The use of the purchaser's inquiries, purchase orders and related correspondence for advertising purposes requires the purchaser's prior consent in writing.
- 15.2 The contractor must at all times maintain secrecy vis-à-vis third parties in respect of all operational events, facilities, plants, documents etc. used at the purchaser's premises or those of the end customer which become known to the contractor in connection with the preparation and performance of the purchase order. This clause does not apply to information already available in the public domain.
- 15.3 The Contractor must hold confidential and not disclose to any person, without the prior written consent of the purchaser, confidential information and will cause his employees and representatives to observe the confidentiality obligations and will be responsible for any breach of it by itself or his employees or representatives. "Confidential information" means all confidential or proprietary written, recorded, electronic or oral information or data (including without limitation research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, know-how, and computer programming and other software and software techniques) provided to the contractor (and/or any entities affiliated with the contractor receiving such confidential information), or acquired accidentally, in connection with the purchase order.

16. Cancellation (Kündigung)

- 16.1 The purchaser is entitled to terminate the purchase order at any time without setting a deadline and without giving reasons.
- 16.2 In such case, the contractor shall only be entitled to compensation for services already provided/supplies already delivered.

17. Insurance

- 17.1 The contractor must take out due insurance coverage against all risks arising under, out of, from or in connection with the purchase order.
- 17.2 All insurance policies of the contractor must be taken out with internationally recognized insurance companies. The contractor must maintain all required compulsory insurance policies in full force and effect during the term of the purchase order and the guarantee period.
- 17.3 The purchaser reserves the right to demand from the contractor certified or uncertified copies of these insurance certificates evidencing the required insurance coverage.
- 17.4 All insurance premiums will be for the contractor's sole account and responsibility.

18 Export Control

- 18.1 The contractor must inform the purchaser on any applicable (re-)export restrictions or prohibitions for the supplied goods (including technology and software) under German, European or US export control law and customs regulations, as well as under export control law and customs regulations of the country of origin of the supplied goods. Therefore, at least in his offers, order confirmations and invoices, the contractor shall at his own cost provide the following information with respect to each supplied good:
- the net weight and the customs tariff number according to the European Combined Nomenclature or the HS-Code according to the "Harmonized System",
 - the export-list number according to European Regulation (EC) no. 428/2009 or national law (Annex AL to the German Foreign Trade and Payments Regulation),
 - ECCN (Export Control Classification Number) for US-goods (including technology and software) pursuant to the US Export Administration Regulations (*EAR*),
 - country of origin and of the components thereof, including technology and software,
 - any transport through USA, manufacture or stocking in the USA and whether manufactured by using US technology,
 - a contact person in his organization to provide further information to the purchaser upon request.

The contractor is obliged to inform purchaser immediately about any changes in points a) – f).

- 18.2. Upon purchaser's request, the contractor must at his own costs provide any other foreign trade data with respect to each supplied good and its component(s) in written form and must inform the purchaser on all changes to such data without undue delay prior to delivery.

19 Dispute Resolution

- 19.1 If the parties do not reach an agreement within 15 days, either party will be entitled, upon giving ten days' notice to the other party, to refer the dispute to be exclusively settled by arbitration under the rules of the

German Institution for Arbitration (DIS). The arbitral tribunal also has the competence to decide whether the parties entered into a valid and enforceable arbitration agreement.

- 19.2 The location of the arbitration will be Cologne, Germany, and the language of the arbitration will be English.
- 19.3 The number of arbitrators will be three. Each party will appoint one arbitrator within 25 days after receipt of the notice referred to above and the two arbitrators appointed by the parties will appoint the third arbitrator who will serve as the chairman of the arbitral tribunal. If a party fails to appoint its arbitrator or if the two arbitrators appointed cannot agree upon the third arbitrator within a period of 30 days after receiving notice of the arbitration from the other party, then such arbitrator will be appointed by the DIS. An arbitrator must be a qualified lawyer and must not be a present or former employee or agent of or consultant or counsel to either party. The arbitrators will have full power to open up, review and revise any decision, opinion, determination, certificate, valuation or instruction.
- 19.4 The arbitral award will be
- a) based on the majority decision of the arbitrators,
 - b) in writing and set forth in reasonable detail the facts of the dispute and the reasons for the tribunal's decision,
 - c) final and binding on the parties; no recourse to any courts having jurisdiction will be admissible, except as may be necessary to enforce the arbitral award.
- 19.5 The cost of the arbitration including expenses and legal fees will be allocated among the parties in correlation to winning and losing; the arbitral tribunal will allocate the bearing of the costs in exercising its discretion solely guided by its decision.
- 19.6 Any dispute arising before or during an amicable settlement procedure and/or before or during arbitration procedure does not entitle any party to suspend the execution of its obligations under this agreement.
- 19.7 Each party will have to present its facts and prove them in accordance with the rules of evidence applicable in the ordinary courts of Germany. The arbitral tribunal must not order the production of documents.
- 19.8 The parties undertake to keep confidential the fact of any dispute, all briefs, documents and any communication including any award or resolution not otherwise in the public domain, save and to the extent that disclosure may be required by legal duty, to protect or to pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a court.
- 18.9 The parties irrevocably waive any sovereign immunity right they may have.

20 Final Provisions

- 20.1 The contractor is not entitled to transfer to third parties, in whole or in part, any right, claim or obligation arising out of, under from or in connection with the purchase order without the written consent of the purchaser.
- 20.2 The beginning of the statutory period of limitation for the infringement of intellectual property rights is deferred by 30 years.
- 20.3 The place of fulfilment for all supplies/services is the place of acceptance/handover/performance specified in the purchase order. The purchaser is entitled to change the place of

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acceptance/handover/performance and thus the place of fulfilment if in consideration of the purchaser's legitimate interest the change is reasonable for the contractor.

- 20.4 The contractor must fulfil all specifications and measures resulting from the REACH directive, if applicable, for all materials and products supplied to the purchaser.
- 20.5 The contract language of the purchase order and of all communication between the parties is German or English.
- 20.6 The purchase order and all claims arising out of, under, from or in connection thereof are subject to German law, excluding the regulations of the Convention on the International Sale of Goods of April 11, 1980 (CISG).