

General Terms and Conditions for Purchases-GTC

1. General provisions

1.1 The GTC shall be applicable to all purchases and procurement transactions of Wifag Service AG (hereinafter referred to as "Purchaser" irrespective of the nature of such purchase/ transaction).

Unless otherwise agreed upon in writing, the GTC shall also be applicable to all subsequent transactions with the same contracting party (hereinafter referred to as "Supplier").

Supplier is responsible and warrants that the conditions of the GTC are known to and fully respected/fulfilled by any Third Parties adjoined by Supplier for the performance of its contractual obligations.

1.2 Binding effect for the Parties shall only result from written agreement/ notification/confirmation.

1.3 As long as there is no conclusion of a contract (acc. to par. 3.2 and 3.3 below: (i) by receipt of a written confirmation of an order by Supplier or (ii) by execution of a written Agreement/of the written arrangements and signing of the GTC), a withdrawal or breaking-off from negotiations shall remain without any financial consequences/ obligations to any Party.

2. Offer and obligation to inform by Supplier

2.1 Upon inquiry by Purchaser, Supplier shall be requested as a specialist to submit an offer free of charge and costs.

If such offer does not contain an explicit limit of validity, it shall be valid and binding until recalled in writing by Supplier.

2.2 Such offer must fully comply with the descriptions, requirements and objectives specified by Purchaser. Any divergences must be explicitly pointed out by Supplier in the offer.

Supplier recognizes and warrants its comprehensive obligation to provide full information and explication to Purchaser, also during the execution of an order/transaction.

3. Order and confirmation of order; written Agreement

3.1 Purchaser shall place any order to Supplier in writing and in two copies upon reception of the offer.

3.2 All orders/transactions shall be placed and executed exclusively under the provisions of these GTC (imprinted on the reverse of the orderform or as integrated annex of a written Agreement/arrangement).

An order shall not be considered as contractually binding for Purchaser until one copy of the order has been returned to and received by Purchaser, dated and validly signed by Supplier, and only if such confirmation does not contain any divergences from the order.

3.3 If, in place of or in addition to offer, order and confirmation of order, the Parties intend to (i) conclude a comprehensive written Agreement or (ii) written arrangements concerning particular rights/obligations, the respective order/transaction in its entirety shall only be considered as contractually binding upon the signing of the Agreement/ arrangements and the GTC as integrated part

of an Annex to such Agreement/arrangement by Supplier.

4. Prices

4.1 Unless otherwise agreed upon by the Parties in writing, all prices are considered to be fixed prices.

4.2 In case of later modifications of an order/delivery, Supplier shall immediately submit to Purchaser a additional written offer containing the changes of the price caused by such modification.

Such modification shall only be considered as mutually accepted and contractually binding upon confirmation of the additional offer in writing by Purchaser.

5. Term of delivery and Delay of delivery

5.1 Delivery is due on the term and at the place/destination agreed upon by the Parties. The agreed term of delivery is a fixed term. Unless otherwise agreed upon by the Parties in writing, Supplier shall automatically be in default in case of delivery after such term.

5.2 In case of such default and unless otherwise agreed upon by the Parties in writing, Supplier shall pay to Purchaser a penalty of 1% (one percent) of the price of the delayed delivery for every week of delay, however not exceeding the total of 7,5% (seven and a half percent) of this price.

In case of default of a part delivery, the penalty shall be calculated accordingly, but based only on the price of those goods and services of the delivery, the full use/application of which is being affected by the delay.

In any case, Purchaser reserves all rights to claim performance of contract and/or damages and costs in addition to the penalty.

5.3 Supplier may only invoke absence of performance of assistance by Purchaser if such performance/assistance has been timely requested by Supplier.

5.4 Partial delivery and early delivery shall only be accepted by Purchaser if previously agreed upon by the Parties in writing.

6. Transportation, Passage of risks, insurance and packaging

6.1 Unless otherwise agreed upon by the Parties in writing, the costs of transportation to the place of delivery shall be considered as included in the agreed price.

6.2 Unless otherwise agreed upon by the Parties in writing, the passage of risks shall take place with the delivery at the agreed destination.

6.3 Unless otherwise agreed upon by the Parties in writing, insurance for transportation risks shall be the responsibility of Supplier at its own costs.

6.4 Supplier is fully responsible and liable for appropriate packaging.

Supplier shall duly inform Purchaser of any need for special diligence/ arrangements concerning the removal of the packaging and/or auxiliary constructions.

7. Guarantee and Prescription, Notification of defects, Product liability

7.1 Supplier warrants and guarantees as a specialist that the delivered goods and

services (i) are free of any faults or deficiencies affecting their value or serviceableness for the presumed use, (ii) present all specified and warranted qualities, and (iii) correspond to and comply with all requested and prescribed features, specifications and performance parameters.

Moreover, Supplier warrants and guarantees that the delivered goods and services comply with all applicable legal provisions and standards at the place, where the goods and services or the final product, of which they part of, are used or being put into operation. Especially, Supplier shall submit to the Purchaser without special request all necessary declarations of conformity according to the applicable EC-directives and -regulations with the delivery.

7.2 The term of warranty and prescription shall, in the sense of a time-limit for the notification of defects and the raising of warranty-claims, be 12 (twelve) months, beginning with the successful putting into operation or use of the delivered goods and services by the end-consumer, but in any case not exceeding 24 (twenty-four) months after taking delivery. During this term, defects may be notified to Supplier at any time.

7.3 If the delivered goods or parts thereof are not in compliance with the warranty specified under par. 7.1 above, Supplier shall be obliged to remove/repair or have removed/ repaired all faults and defects at the place where the delivered goods are located at that time and at its own costs.

If full removal or repair of a fault or defect is not possible within a period of time useful to Purchaser and/or the end-consumer, the Supplier shall provide and install immediately full and faultless replacement free of costs.

In case the Supplier is not capable of immediate removal/repair or replacement, Purchaser shall be entitled to remove, repair or replace defects himself or have them removed, repaired or replaced by a third party at the cost of the Supplier.

All costs and expenses including transportation and travelling resulting from removal or replacement services shall be covered by the Supplier.

7.4 In addition to the warranty-rights stipulated in the foregoing par. 7.3, Purchaser shall have the right, at its full discretion and choice, to claim redhibition of the transaction or reduction of the price pursuant to the Swiss Code of Obligations.

Moreover, Supplier shall compensate all damage caused to Purchaser and/ or the end-consumer by a fault or defect or the removal/replacement of a fault or defect, independent from and irrespective of fault.

7.5 Supplier shall be fully and un-conditionally responsible and held liable for all goods and services produced and/or delivered by subcontractors in analogy to the warranty stipulated in this par. 7.

7.6 Supplier shall separately warrant and guarantee all replacement and removal deliveries and services in analogy to par. 7.1 to 7.5 above.

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7.7 At its own expense and costs, Supplier shall support Purchaser using its best efforts in the defense against any third party product-liability claims.

If such claims originate from or are caused by the delivered goods and/or services, Supplier shall fully indemnify and hold Purchaser harmless. In such a case, Supplier shall also take over and conduct any legal proceedings at its own costs upon request by Purchaser.

8. Product observation

8.1 Independently from Purchaser, Supplier shall observe the serviceability and feasibility of the delivered goods. Purchaser shall be immediately informed about all observations which might lead to any warning or recall action.

8.2 Supplier shall indemnify and hold Purchaser harmless from any and all costs and expenses resulting from any warning or recall action caused by the goods and/or services delivered by Supplier.

9. Consequences of delay, Rescission of Agreement

9.1 In case of delay of delivery or, for non-fixed-term delivery, the expiry of an appropriate additional period of time for delivery, or in case of delay of removal/replacement of defects according to par. 7.3 above, Purchaser shall be entitled to, at its full discretion and choice, either (i) waive delivery and claim damages pursuant to the positive expectation interest or (ii) rescind the contract and claim damages pursuant to the positive expectation and/or to the negative reliance interest.

9.2 If it becomes apparent before the term of delivery that Supplier will not deliver in time, Purchaser may exercise the rights according to par. 9.1 above already at that time.

9.3 Purchaser shall also be entitled to rescind the contract in case it becomes apparent during the manufacturing period that the object of delivery will not be serviceable. In such a case, Purchaser shall be entitled to claim damages according par 9.1 (ii) above.

10. Inspection of production in progress

Purchaser shall be entitled to inspect production-work in progress at any time.

By exercise of this right, the obligation of Supplier to comply with all terms and conditions agreed upon by the Parties, including but not limited to the GTC, shall not in any way or respect be modified, restricted or limited.

11. Industrial and intellectual property rights of Third Parties

Supplier warrants that delivery, use and operation of the delivered goods and services do not affect, violate or interfere with any industrial or intellectual property rights of Third Parties (patent rights, sample or model rights etc.). Supplier will indemnify and hold Purchaser harmless from any and all claims resulting from, arising out of or relating to such violation and shall take over any legal proceedings in defense against such claims at the request of Purchaser and at its own costs.

12. Assembly

If the Supplier is obliged to carry through the assembly of the delivered goods and if not otherwise agreed upon by the parties in writing, all costs and expenses arising from or relating to the assembly shall be compensated with the agreed price.

13. Work at Purchaser's premises or at the premises of the end-consumer

In addition to these general terms and conditions, all safety regulations and instructions of Purchaser and/or the end-consumer applicable at a time must be respected and observed by Supplier and any third party adjoined by Supplier.

14. Construction drawings, Operating instructions and prescriptions

Upon request by Purchaser, the construction drawings and blueprints for the production shall be submitted by the Supplier to Purchaser for approval before the beginning of the production. Such approval shall not in any way release Supplier from complying with its contractual obligations, especially the responsibility for serviceability and feasibility of the objects of delivery. The final construction drawings, maintenance and operating instructions as well as the list of spare-parts for appropriate main-tenance of the delivered goods shall be handed over to Purchaser with the delivery free of cost or charge.

15. Confidentiality

15.1 All information, drawings, blueprints etc. provided to Supplier by Purchaser for the production of the objects of delivery are not to be used by Supplier for any other own purposes or purposes of third parties, copied or made accessible to third parties in any way.

In such information, documents and materials etc., Supplier shall have no other rights or claims other than those provided in and/or needed for the purpose/execution of the contract between the parties. All copyrights shall fully and exclusively belong to and remain with Purchaser.

Upon request by Purchaser, all documents including all transcripts and copies shall be immediately returned by Supplier to Purchaser. In case delivery does not take place at all, all documents, transcripts and copies shall be immediately returned by Supplier to Purchaser without special request.

15.2 Supplier shall handle and treat the order/transaction and all related informations, services and deliveries with strict confidentiality.

15.3 Purchaser shall handle technical documentations made available by Supplier or a sub-contractor with strict confidentiality. All intellectual property rights related to such documentations shall remain with Supplier or the sub-contractor.

15.4 In case of a violation of par. 15.1 to 15.3 above, the violating party shall pay to the other party a penalty of 15% (fifteen percent) of the agreed price, at least SFr. 10'000.--, for each violation. Payment of the penalty shall not release the violating party from its duty to

respect and fulfill the obligations stipulated in par. 15.1 to 15.3 above in the future.

In addition to the penalty, the other party shall have the right to claim exceeding damages, the onus of proving such damage residing with the claimant.

16. Terms of payment

Unless otherwise agreed upon by the parties in writing, payments shall be made at the end of the calendar month following the month of the reception of the invoice.

Purchaser explicitly reserves the right to compensate such payments with any counter-claims.

17. Advance payment

In case of advance payments and unless otherwise agreed upon by the parties in writing, Supplier shall provide appropriate and sufficient security (e.g. bank guarantee) and pay an appropriate interest to be agreed upon on the advance payments.

18. Force majeure

18.1 In case of force majeure, the Parties shall not be held liable for any damages resulting from the non-

compliance of contractual obligations

Force majeure shall be defined as a condition coming into effect after the conclusion of a contract, which could not be predicted nor objectively prevented by the parties.

18.2 The Party invoking force majeure shall immediately inform the other Party of the occurrence and expected duration of such condition, in default whereof it shall not be able to invoke such a condition.

18.3 Upon request by Purchaser, Supplier shall submit to Purchaser a certified confirmation of the conditions he considers to be of "force majeure" -quality.

18.4 The right to rescind the contract according to par. 9 above shall be applicable also in case of force majeure.

19. Exclusion of applicability of other GTC

No other GTC other than the present GTC shall be applicable to the contractual relations between Purchaser and Supplier.

20. Applicable law, place of Performance and Jurisdiction

20.1 All contractual relations between Purchaser and Supplier shall be exclusively governed and interpreted by Swiss law. The stipulations of any written Agreement or arrangements, of the order/confirmation of the order, the present GTC and in addition of the relevant legal provisions of the Swiss law shall be applicable in this order.

In case of inconsistencies and contradictions, the priority of applicable provisions shall be determined according to this order.

Stringent provisions of Swiss law shall prevail.

20.2 The sole place of performance and jurisdiction for any disputes arising between the Parties shall be at the legal seat of Purchaser.