

GENERAL PURCHASING CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES

of Vits Technology GmbH

- JULY 2021-



- 1. General, Scope of Applications**
- 1.1 The following General Purchase Conditions (GPC) shall form a fundamental part of the orders covering the supply of goods and services (jointly called 'services'). They shall be applicable in relations with companies, public law bodies and public special assets (Contractors).
- 1.2 By acceptance of these GPC without objection, Contractor shall agree to their exclusive application to the order in question as well as possible follow-up business.
- 1.3 The decisiveness of deviating General Terms and Conditions of Contractor is opposed hereby even for the event that they should be transmitted to Purchaser in letters of confirmation or otherwise.
- 2. Offer, Side Agreements, Unauthorized Publicity**
- 2.1 Oral side agreements as well as exclusion, modification of and/or additions to these GPC shall require the expressly written confirmation of Purchaser to take effect.
- 2.2. The use of orders for reference and/or publicity purposes shall require the prior written approval of Purchaser.
- 3. Drawings, Models, Tools**
- Regarding all figures, drawings, models, samples, calculations, design drawings and other documents, which have been made available or paid by Purchaser for the performance of the order, his property and/or copyright and/or other industrial right shall be reserved; said documents shall only be used for work required for the performance of the order and, without the express written approval of Purchaser, shall neither be reproduced nor disclosed to third parties. On execution of the order, they shall be returned to Purchaser without special request and free of charge. Contractor shall be liable to Purchaser for any damage caused by culpable contravention.
- 4. Responsibility for Technical Data**
- The Purchaser's approval of drawings, calculations and other documents shall not affect the sole responsibility of Contractor for the goods/services sold. This shall also be applicable to proposals, recommendations and other contributions by Purchaser.
- 5. Inspections**
- After prior notification in good time in advance, Purchaser and/or his employees and/or third parties appointed by him shall at any time be granted access to the manufacturing facilities of Contractor and/or his subcontractor, in order to check the status of manufacturing, use of suitable materials, assignment of the necessary specialized staff and execution of the ordered work according to the rules of the art. Such inspections shall be carried out without any legal effect for possible acceptance; an inspection shall neither replace an acceptance nor restrict in any way the sole responsibility of Contractor for his services, in particular, no defence of contributory default of Purchaser may be derived from such inspections.
- 6. Spare parts**
- Contractor shall warrant that spare and wear parts will be available for every order for a period of at least 10 years after the end of the warranty period.
- 7. Transport of Hazardous Goods, Identification of Hazardous Substances, Packaging**
- 7.1 It shall be up to Contractor to check before acceptance of the order whether the goods and/or their components are classified as hazardous goods in their country of origin, country of destination and/or all transit countries (e.g. paints, adhesives, chemicals or inflammable, oxidizing, explosive, combustible, toxic, radioactive, corrosive goods or those tending to self-heating). In such cases, Contractor shall inform Purchaser without delay giving full details. He shall send Purchaser the necessary binding declarations legally required for shipment of such goods, in a correctly filled-in and duly signed form, at the latest with his written confirmation of order.
- 7.2 As regards packing, identification and declaration of hazardous goods Contractor shall be obliged to observe the applicable national and international regulations, in particular
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| Sea freight | Hazardous Goods Ordinance –
Sea IMDG Code |
| Air freight | UNICAO IATA RAR US-Dot |
| Rail transport | VO/RID and Hazardous Goods Ordinance –
Rail |
| Road transport | ADR and Hazardous Goods Ordinance –
Road |
| General | Hazardous Substances Ordinance |
- Possible deviating and/or supplementary national regulations of the respective country of destination shall also be observed provided that the country of destination has been given the order.
- 7.3 Contractor shall be liable for all damage arising as a result of incorrect information in the binding declarations or failure to comply with existing rules when handling (packaging, shipping, storing etc.) hazardous goods.
- 7.4 Contractor shall take back packaging material free of charge for Purchaser.
- 8. Export License**
- Contractor shall be obliged to immediately inform Purchaser in writing whether and to what extent state import licenses will be necessary or similar legal or official requirements have to be fulfilled for the order as a whole or part of it, or whether they are subjects to US export restrictions.
- 9. Prices, Price Quotation, Terms of Payment, Delay**
- 9.1 The agreed contract prices shall be binding. They shall be understood without legal value-added tax
- 9.2 Unless expressly otherwise agreed in writing, the prices shall be understood DDP (40764 Langenfeld / GERMANY) in accordance with INCOTERMS 2020.
- 9.3 Payment shall be effected within 30 days following the complete and correct fulfilment of the contract and receipt of the invoice less 3 % discount or within 60 days, net.
- 9.4 In the event of instalment payments being agreed, receipt of the invoices shall be the sole criterion for the beginning of the term, unless the performance of certain services and/or the provision of securities have been agreed as prerequisites.
- Invoices for services, which Purchaser has committed to a third party, with the knowledge of Contractor, shall only be due and payable when and to the extent, to which Purchaser has received compensation for the services or parts thereof from said third party because of possible defects, this shall only be valid if Contractor provides a security of the equivalent amount of Purchaser.
- Possible instalment payments shall not release Contractor from his obligation to show and charge all services in an itemized final invoice.
- 9.5 Delay after the due date shall only arise on the basis of a written reminder.
- 9.6 Purchaser shall not be in delay in payment if he was mistaken in good faith regarding the existence of a defence of the claims of compensation of Contractor or a claimed right of retention.
- 9.7 In the event that the delay in payment of Purchaser should be based on simple negligence, penalty interest shall be limited to 3 (three) percentage points beyond the basic interest rate (art. 247 BGB (German Civil Code)), unless Contractor furnishes proof that higher damage was caused to him as a result of the delay.
- 9.8 Payments of Purchaser shall in no case mean an acknowledgment of perfect performance according to the rules of the art in the sense of an acceptance.
- 10. Offsetting, Right of Retention, Group Clearing**
- 10.1 Purchaser shall be entitled to offsetting and retention rights in the total extent.
- 10.2 Disputes regarding the amount to be paid to Contractor shall not entitle Contractor to stop his services as a whole or in part, not even temporarily.
- 11. Delivery Period; Delayed Delivery**
- 11.1 The delivery period given in the order shall be binding. Early deliveries and/or part deliveries shall require the express written approval of Purchaser.
- 11.2 Contractor shall be obliged to inform Purchaser without delay in writing in the event that circumstances should occur or become visible as a result of which it will not be possible to observe the delivery period.
- 11.3 Purchaser shall be entitled to request, besides fulfilment, a contractual penalty of 0,2 % of the total contract price for each working day of deferment, however, without exceeding a total of 10 % of the total contract price. Assertion of further claims due to delay (including the right to revoke the contract and/or claim damages instead of performance of work) shall not be excluded by this. The right of Purchaser to claim the contract penalty shall continue until final invoicing / payment even if this has not been reserved at the time of acceptance of the work.

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- 11.4 Moreover, irrespective of his other rights at the end of a reasonable grace period granted by him or in the event that, as a result of the delay, the work is no longer of interest to him, or in case of imminent danger, or in order to avoid further damage or in case of urgency, Purchaser may have the work, not yet performed by Contractor, carried out by a third party at the expense of Contractor, without having granted a grace period. In any case of substituted performance by Purchaser, Contractor shall, at his expense, provide all information required for this purpose to Purchaser and deliver the documents in his possession and, in case of possible own industrial rights or industrial rights of third parties in such documents, procure appropriate rights of use to the extent required for said substituted performance, and/or indemnify Purchaser without delay for claims under said rights of third parties.
- With the conclusion of this contract, Contractor shall agree to the use of his industrial rights in the event of substituted performance of work by Purchaser or third parties contracted by him. The claim to payment of the contract penalty already arisen by the time of award of the contract to said third party shall be fulfilled in any case.
- 12. Passage of Risk**
- Contractor shall bear the risk in accordance with the terms of delivery agreed in line with para. 9.2.
- 13. Documents**
- Contractor shall be obliged to give the order number of Purchaser as well as the contractually agreed identifications on all shipping papers and/or delivery notes, otherwise possible consequences (e.g. delays, extra cost) shall solely be borne by him.
- The contractor shall be obliged to add a supplier's declaration on each shipment.
- 14. Warranty, Notice of Defects, Resource**
- 14.1 Contractor shall warrant that his services comply with the recognized rules and the latest state of engineering as well as the standards, regulations and codes applicable in the country of Contractor and in the country of destination (including safety, labour protection, and accident prevention regulations), have got agreed qualities, the guaranteed characteristics and besides are free of fault and deficiencies in title.
- 14.2 Purchaser will be entitled to the legal warranty claims including the rights under art. 478 BGB (recourse of entrepreneur) without any restrictions.
- In any case, Purchaser may, at his discretion, request Contractor to repair deficiencies or provide replacement; Contractor shall bear all expenses required for the repair of deficiencies or the provision of replacement.
- After due information of Contractor, Purchaser shall also be entitled to repair deficiencies himself, at the expense of Contractor, in case of imminent danger or special urgency or if a grace period previously granted to him for the repair of deficiencies elapsed unsuccessfully or performance failed or if this appears appropriate to reduce damage.
- To cover the resulting expenses necessarily incurred, Purchaser may ask Contractor for an advance payment.
- 14.3 In the event that Purchaser should be entitled according to the above para. 15.2. to repair the deficiencies himself, para. 11.4 shall be applicable regarding the obligations of Contractor.
- All costs incurred in conjunction with the repair of deficiencies, especially for dismantling, installation, travelling, freights, packaging, insurance, customs duties and other public duties, inspections and technical acceptance shall be borne by Contractor.
- 14.4 The claims of Purchaser for deficiencies shall be statute-barred, unless otherwise agreed in writing, within 36 months of the passage of risk (para. 13). If the work is intended for a building and it has caused its deficiency, the limitation period shall be 5 years. Longer legal limitation periods shall remain unaffected; art.438 para. 3, 479 and 634a para. 3 BGB shall equally remain unaffected.
- 14.5 Provided that and as long as work cannot be used in a contractual manner due to post performance work by Contractor, the related warranty period shall be extended by the duration of such interruption. The limitation period for the work repaired and/or replaced under the warranty shall restart with the acceptance of the repair and/or replacement, however, without exceeding five years, in the event of construction work, seven years after the passage of risk.
- 14.6 The provisions of art. 476 BGB shall apply accordingly, while the period shall be extended to 18 months.
- 15. Product Liability, Indemnification, Insurance cover**
- 15.1 Provided that the Contractor is responsible for a product defect or infringement of legal/official safety regulations, he shall indemnify Purchaser, on first request, for possible claims of damages by third parties. Moreover, Purchaser shall be entitled to reimbursement of all expenses incurred by Purchaser, in particular in conjunction with recall actions caused by him as a result thereof; Purchaser shall inform Contractor in advance of the type and scope of recall actions, as far as possible and reasonable. Further legal claims shall be reserved.
- 15.2 This shall apply accordingly in the event that product defects are attributable to work of sub-contractors or sub-suppliers of Contractor.
- 15.3 Contractor shall be obliged to maintain sufficient insurance cover for product liability and to furnish at any time written proof to Purchaser on his request, especially by written confirmation of the insurer of Contractor.
- 16. Liability for Environmental Damage**
- Contractor shall be liable for all damage caused in conjunction with his services by infringement of environmental protection provisions (such as emission protection law, used oil and water management law, waste removal law and/or related ordinances issued). In this conjunction, he shall indemnify Purchaser, on first written request, for all possible claims of damages of third parties. Moreover, he shall respond for the damage caused to Purchaser.
- 17. Industrial Rights**
- Contractor shall guarantee that no rights of third parties will be infringed in conjunction with the performance of the orders. In the event of any claims being put forward by third parties, Contractor shall indemnify Purchaser for all such claims on first written request. The obligation of indemnification shall also refer to all expenses necessarily incurred by Purchaser and/or in conjunction with such claims.
- 18. Subcontracts, partial Ineffectiveness**
- 18.1 Contractor shall require the prior written approval of Purchaser for the exercise of retention rights against subcontractors.
- To avoid the exercise of retention right on the part of subcontractors of Contractor, Purchaser shall be entitled to effect direct payments to subcontractors, which, in the relationship with Contractor, shall be deemed payments instead of performance provided they refer to justified claims of the subcontractor. Justified claims of the subcontractor against Contractor as used in the above sentence shall also include claims regarding the existence of which Purchaser was mistaken in good faith.
- In any case third parties, in particular sub-suppliers and subcontractors, to the fulfilment of his obligations under the order or who are involved by him in conjunction with his services, shall be deemed agents of Contractor.
- 18.2 In the event of ineffectiveness of one or more provisions of the contract, the effectiveness of the other contractual provisions shall not be affected. The contracting partners shall undertake to substitute this, without delay by way of the supplementary agreement, by such an arrangement which will come closest to the beneficial result of the ineffective provision of the contract.
- 19. Place of Performance**
- The place of performance for services of Contractor shall be agreed place of use, for payments of Purchaser it shall be his registered office.
- 20. Jurisdiction, applicable Law**
- 20.1 Provided that Contractor is a fully qualified merchant, a public law body or public special asset, the place of jurisdiction for all kinds of procedures shall be the registered office of Purchaser; Purchaser may also proceed against Contractor at the general place of jurisdiction of Contractor.
- 20.2 For the legal relationship of the contracting partners the law of the Federal Republic of Germany shall exclusively be applicable, and the application of the UN-Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

**Langenfeld, July 2021
Vits Technology GmbH**