

## **GENERAL TERMS OF PROCUREMENT**

Wöhrlé Stromversorgungssysteme GmbH  
(Status as at 03/2020)

### **1. Scope of validity, Defense Clause, Written Form**

- 1.1 Our procurement of supplies and services (hereinafter referred to as "Services") shall be governed exclusively by these Terms and Conditions without us having to refer to them in each individual case. Deviating, conflicting or additional terms and conditions of the supplier shall only become part of the contract insofar as we have expressly agreed to their validity in writing. The unconditional acceptance of deliveries does not constitute consent. Individual agreements made in individual cases shall take precedence over our terms and conditions if they have been expressly made or expressly confirmed by us.
- 1.2 Unless expressly provided otherwise in these Terms and Conditions, the agreed written form shall also be complied with by fax or email.
- 1.3 References to the applicability of statutory provisions shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these Terms and Conditions of Procurement.

### **2. Conclusion of the contract**

Our verbal or telephone orders as well as additions and changes to an order require our written confirmation. We shall be bound by our order for two weeks from the date of the order. However, we may revoke the order until receipt of a written confirmation of acceptance from the supplier with the same content as our order.

### **3. Collaboration, Contract Documents**

- 3.1 Frequently, the service provision requires close cooperation between us, our customer, other contractors and the supplier. Therefore, the supplier will cooperate with us and the third parties as closely as necessary and can reasonably be required of us.

3.2 The supplier will check all order and other contractual documents for completeness, correctness and suitability for the intended use communicated or identifiable by us and will immediately inform us in written form of any discrepancies or errors. The supplier's own responsibility for execution remains unaffected by this.

#### **4. Performance**

4.1 The content, type and scope of performance shall be determined by our purchase order and, if applicable, by the specifications and manufacturing documents (drawings, samples, etc.) provided by us or confirmed in written form to the supplier. In the case of contracts that have not been completely fulfilled (in particular call-off contracts), the supplier shall implement changes to the delivery item at our request, unless these are unreasonable. Insofar as justified by the supplier, he may demand an adjustment of costs and delivery times in accordance with the originally agreed costs and delivery times.

4.2 All delivered items must be manufactured with materials and tools of best suitability and in perfect condition, which comply with our announced technical specifications as well as the applicable ISO standards, European and German standards, statutory regulations (especially in the Product Safety Act), trade association guidelines and similar. These also are the quality standards of the delivery item without explicit agreement.

4.3 For the usual period of use of the delivery items, but at least for ten years after delivery, the supplier shall supply us with spare parts, wear parts and support components for the delivery items at the usual market prices. If the supplier intends to discontinue the production of these parts, he shall inform us - without prejudice to the obligation pursuant to sentence 1 - at least three months before production is discontinued.

4.4 The supplier shall provide complete documentation (e.g. preferential supplier declaration, safety data sheet, operating and maintenance instructions).

4.5 The supplier must obtain all necessary approvals and permits for its services. The supplier shall comply with all statutory and official regulations, the applicable ISO standards, European and German standards, trade association guidelines and the like as well as the state of the art.

4.6 If services are manufactured or provided according to our specifications, acceptance is required - even if this has not been expressly agreed. Acceptance shall take place as soon as

an inspection has shown that the services are free of defects or, at most, still have insignificant defects. An acceptance report shall be prepared and signed by both parties.

- 4.7 Insofar as the supplier provides services on our premises or on the premises of third parties, he shall comply with the relevant regulations (e.g., house rules, safety regulations); it is the responsibility of the supplier to obtain these regulations. Material may only be stored after prior consultation with us. Workplaces must be always kept in an accident-proof condition and must be left tidy and clean at the end of each working day.
- 4.8 The supplier shall also provide services not expressly agreed if these are indispensable for the fulfilment of the performance obligation. Furthermore, we shall be entitled to demand changes to the services within the scope of what is reasonable, with corresponding changes to prices and performance times.
- 4.9 Items entrusted to the supplier by us or on our behalf in connection with its services (e.g. materials, equipment, documents) must be handled with care and damage must be reported to us immediately.
- 4.10 Drawings, plans, film material and animations are also to be handed over to us in digital, modifiable form as open-source files in a structured and comprehensible manner together with written documentation.
- 4.11 The supplier shall name its sub-suppliers to us upon request. We may reject a sub-supplier for good cause; if this results in delays or changes in costs, we shall coordinate with the supplier.
- 4.12 If the supplier is only a distributor in the sale of goods, he must inspect the goods for defects before handing them over to us.
- 4.13 The supplier shall inform us prior to any changes in its production processes, the production location, the material used and the sub-suppliers, unless the supplier can assume based on careful examination that any influence on the quality or condition of its performance for our intended use is discernibly excluded.
- 4.14 Any goods containing or releasing substances which require registration or authorization in accordance with Regulation EC 1907/2006 of 18.12.2006 (REACH-VO) including subsequent amendments and modifications at the time of delivery to us must be registered or

authorized. With each delivery, the supplier shall provide us with an up-to-date, complete safety data sheet that complies with the requirements of the REACH Regulation, even if this is not mandatory under the REACH Regulation.

## **5. Subcontractors**

- 5.1 Services shall be provided by the supplier itself. When executing the order, the supplier shall exclusively use employees who have the necessary skills, experience and qualifications and shall prove this to us upon request.
- 5.2 Without our prior written consent, the supplier shall not be entitled to have the performance owed by him rendered by third parties (e.g. subcontractors, freelancers). The supplier shall bear the procurement risk for its services unless it is a one-off production.

## **6. Time of performance, Shipping, transfer of risk**

- 6.1 Agreed dates and deadlines are always binding for the supplier.
- 6.2 The supplier must notify us immediately in writing if he is unlikely to be able to meet agreed performance times - for whatever reason. In the event of delay, we shall have the statutory claims and rights. If it is a fixed transaction, we may - without prejudice to our other rights - withdraw from the contract without further ado or continue to demand performance if the agreed fixed performance period is exceeded.
- 6.3 Furthermore, should the supplier exceed the delivery date, we shall be authorized to claim 1% of the net price of the entire order for each full week of exceeding the performance time, but not more than 5% of the net price of the entire order, as a contractual penalty. This shall apply mutatis mutandis if there is a delay in partial performance. Claims for damages shall remain unaffected. The contractual penalty shall be offset against a claim for damages. If we accept the delayed performance, we must assert the contractual penalty at the latest with the final payment.
- 6.4 A shipment shall be made Delivered Duty Paid to the place specified in our order (DDP, Incoterms 2020). Any returns shall also be at the supplier's expense and risk. The supplier shall be liable for compliance with the specified shipping instructions. If an acceptance is carried out, the risk shall only pass to us upon our declaration of acceptance.

- 6.5 The supplier shall use environmentally friendly packaging as far as possible. The return of empties and packaging material, unless disposable packaging, shall be free of charge at the expense of the supplier.
- 6.6 The supplier shall enclose a delivery bill with each delivery stating our order number, article number, the quantity, the place of delivery and the description of the goods, insofar as these are stated in our order. Otherwise, we shall be entitled to refuse acceptance without this giving rise to any claims on the part of the supplier. Any resulting costs shall be borne by the supplier.

## **7. Prices, Invoicing, Payment**

- 7.1 Unless otherwise agreed, the agreed price shall be a lump sum and fixed price plus statutory value added tax including all ancillary services and incidental costs (e.g. assembly, installation, packaging, transport, transport insurance, artists' social security contributions) and shall be due for payment after handover or acceptance of the services.
- 7.2 Invoices shall be submitted to us together with the delivery item in a single copy in accordance with the statutory provisions, stating the number of packages, the number of units of the delivery and, if applicable, the number of the packaging. Our article number and the order number must be stated for each item on the invoice, if such a number is included in our order. If the invoice refers to goods of different orders, it must be stated which order was executed with the delivery in each case. In the case of services, a detailed description of the activity must be attached to each invoice.
- 7.3 We shall pay - at our option - after receipt of a proper invoice within 14 days with a 2% discount or within 30 days without discount.
- 7.4 If significant changes in the market situation occur, the supplier shall negotiate with us on an adjustment of the prices. If the negotiations fail, we may terminate existing contracts with a period of notice which shall reasonably consider the interests of both parties. In this case, the supplier may only charge us for the costs actually incurred by him for material that cannot be used otherwise. We shall also have a corresponding right of termination if the supplier's prices are above the market level or at least 3% above the prices of a comparable competitor and the supplier cannot offer us more competitive prices within one month of our written request.

7.5 We shall be entitled to the rights of set-off and retention as well as the defence of non-fulfilment of the contract to the extent provided by law; in particular, we may withhold payments due as long as we are entitled to claims against the supplier arising from incomplete or defective deliveries.

## **8. Reimbursement**

In the event of a net order total in a calendar year of at least 100,000.00 Euro, we shall be entitled to a refund of 3% of this net order total at the end of each calendar year. The net order value is calculated based on our cumulative payments for the procurement of goods and services from the supplier without considering value added tax. The reimbursement shall be made at our discretion by credit note or repayment.

## **9. Examination, Defects**

9.1 The statutory provisions shall apply to our rights in the event of material defects and defects of title in the services and in the event of other breaches of duty by the supplier, unless otherwise stipulated below.

9.2 If there is no acceptance, we shall randomly inspect services after receipt in the ordinary course of business and thus comply with any inspection obligations.

9.3 If the supplier is in default of eliminating the defect or if a delay in eliminating the defect threatens to cause considerable damage to us or our customer, we shall be entitled to eliminate the defect ourselves or have it eliminated by third parties at the supplier's expense, even without prior request to the supplier. We shall inform the supplier about this as soon as possible.

9.4 The costs of subsequent performance shall also include costs of searching for defects and sorting costs at our premises and those of our customer.

9.5 The limitation period for our claims due to a material defect is two years, due to a defect of title four years from delivery or acceptance. Longer limitation periods for other claims not based on a defect itself shall remain unaffected. Longer statutory limitation periods shall also remain unaffected (e.g. for construction defects or claims for surrender in rem).

## 10. Product Liability

- 10.1 If the supplier is responsible for a product defect, he shall indemnify us against claims of third parties for personal injury and property damage to the extent that the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.
- 10.2 In the case, the supplier shall also reimburse us for any expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with a recall action carried out by us or our customer, insofar as we or our customer were obliged to carry out the recall action or such action was reasonable. We shall inform the supplier about the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment.
- 10.3 If claims are asserted against us by third parties in Germany or abroad due to a product defect for which the supplier is responsible, regardless of fault, the supplier shall be liable to us accordingly. The same rules on the burden of evidence shall apply to the relationship between us and the supplier as to the relationship between us and the third party.

## 11. Rights

- 11.1 If the supplier's performance consists of the creation of work protected by copyright, we shall receive the exclusive, transferable, irrevocable and temporally and locally unrestricted right to use and exploit the performance free of charge, in particular to reproduce it, process it, make it publicly accessible and to make it available to third parties free of charge or against payment for a limited period of time or permanently, in particular also in connection with other products; We shall therefore be entitled to all rights of use, processing and exploitation of the performance without limitation. All claims of the supplier for granting the rights are compensated by the agreed remuneration - this excludes license payments now and for the future. The supplier renounces rights to any copyright notice.
- 11.2 The supplier shall also grant us exclusive rights of use, unrestricted in terms of territory, time and content, for the types of use unknown at the time of conclusion of the contract. If we exploit unknown types of use ourselves or through third parties, the supplier shall receive an appropriate remuneration on which we shall agree with him at the time of the intended commencement of use. If no agreement is reached within one month after we have sent the notification of the intended commencement of the new type of use to the supplier at the address last known to us, we shall be entitled to determine the remuneration at our reasonable

discretion. The supplier shall be entitled to have the correct exercise of its discretion reviewed by the competent regional court within six months of the determination of the performance.

- 11.3 If the delivery item consists completely or partially of software, the supplier shall grant us a non-exclusive, transferable, and irrevocable right of use to the software which is not limited in time and place. In principle, we shall be entitled to reproduce the software - to the extent necessary for use in accordance with the contract.
- 11.4 The supplier must have concluded written agreements with its employees or third parties which unconditionally ensure the fulfilment of its obligations under the above provisions and shall submit these agreements, or at least the relevant parts thereof, to us upon request.
- 11.5 The supplier guarantees that its goods or their contractual use do not violate any rights of third parties in the countries to which we deliver and in which the goods are used as intended; this applies particularly to the European Union and the European Economic Area.
- 11.6 If, in connection with the execution of our order, improvements to additional materials provided (see Section 13.1) or other improvements are made by the supplier based on our production documents, we shall have a free, non-exclusive right of use these improvements and any industrial property rights thereto.

## **12. Software**

If the service consists in whole or in part of software the supplier creates for us, the supplier shall be obliged to provide the source code. If only the transfer of the object code has been agreed with the supplier, we may demand the deposit of the source code (e.g. at TÜV Süd) at our expense. Together with the software, we shall receive printable user documentation and - if the transfer of the source code is owed - additionally development documentation, in German language in each case. Furthermore, we may demand that the supplier conclude a customary maintenance agreement at the customary terms and conditions.

## **13. Provisions**

- 13.1 Illustrations, concepts, plans, drawings, calculations, design specifications, product descriptions, tools, models and other documents and materials which we provide to the supplier, or which are otherwise provided or delivered directly to the supplier on our behalf (provisions) shall remain our property. They may not be sold to third parties, assigned as security,



pledged, passed on or used for third parties or made accessible to them without our consent. Provisions shall be insured by the supplier against all usual risks at its own expense and shall be stored as our property and separately from identical or similar items owned by third parties or the supplier. The supplier may only use the materials provided to produce our order and must return them to us immediately upon request. The supplier shall also impose these obligations on his vicarious agents.

- 13.2 The supplier shall notify us immediately of any impending pledge of the materials provided and of any other impairment of our rights as well as in the event of loss or damage. He shall be obliged to segregate the materials provided.
- 13.3 Any processing, mixing or combination of materials provided by the supplier shall be carried out on our behalf. If, in the event of processing, mixing or combining with items of third parties, their ownership rights remain, we shall acquire co-ownership of the new item in the ratio of the value of our provision to the other items.
- 13.4 The reproduction of models, samples, or other documents we provide to the supplier or of those produced by the supplier according to our specifications is only permitted to the extent necessary for the processing of the offer/execution of the delivery. If the supplier provides such documents to a sub-supplier, the supplier shall impose a corresponding written obligation on the sub-supplier before providing them and shall submit them to us upon request.
- 13.5 Items manufactured according to our specifications may neither be offered nor supplied to third parties without our consent; this obligation will exist even after termination of the business relationship.
- 13.6 Provisions shall be handled with care by the supplier and returned without delay after the end of the contract.

#### **14. Retention of title**

We object to all forms of extended or prolonged retention of title.

#### **15. Confidentiality clause**

- 15.1 The Supplier is obliged to treat all commercial and technical details of which it becomes aware through the business relationship with us as a trade secrecy and to use them only for the

purposes of our cooperation with us, as long as and to the extent that it is not or does not become generally know, this applies particularly to all information marked as “secret”, “confidential” or similar. The information must be kept carefully and protected against unauthorized access by third parties. This applies also for information from our customer This applies to vicarious agents (including employees) of the supplier. These must be committed accordingly in writing; the obligations are to be presented to us on request.

- 15.2 Unless otherwise prohibited by copyright or any other law, the supplier is not permitted to obtain a trade secret by observing, examining, dismantling, or testing the provided products or objects.
- 15.3 The supplier shall only be entitled to refer to an existing business relationship with us for advertising purposes with our prior written consent.
- 15.4 The publication of delivery items manufactured on our behalf and according to our specifications for purposes of self-promotion by the supplier requires our prior written consent.

## **16. Non-competition clause**

- 16.1 The supplier may not deliver any delivery item that is specially designed, manufactured and/or marked by the supplier with our trademark to one of our competitors during our cooperation and within one year after the end of the cooperation.
- 16.2 For each case of culpable infringement of the prohibition under paragraph 1, the supplier promises to pay a contractual penalty of up to 20,000.00 euros, the amount shall be determined by us at our reasonable discretion and, at the supplier's request, shall be reviewed for appropriateness by the competent court. In the case of continuous violations, each week or part thereof shall be deemed to be a separate violation. The assertion of further compensations shall remain unaffected.

## **17. Data protection**

The supplier shall guarantee and warrant that he complies with all relevant data protection provisions, also for any employees and vicarious agents. The persons employed by him shall be bound to confidentiality in accordance with the Basic Data Protection Regulation.

## **18. Minimum wage**

The supplier shall comply with the provisions of the Minimum Wage Act and the Working Hours Act and shall also oblige its subcontractors accordingly. He shall indemnify us against claims by third parties based on the violation of the Minimum Wage Act and the Working Hours Act by him or his subcontractors.

## **19. Right of retention**

The supplier shall not be entitled to retain its performance in whole or in part (e.g. plans, drawings, film material) if we need them to fulfil our contractual obligation towards our customer, even in the event of a dispute about the supplier's claims for remuneration; at the supplier's request, we shall place any claims for remuneration in dispute in an escrow or trust deposit.

## **20. Insurance**

During the contractual relationship, the supplier shall maintain appropriate liability insurance with coverage amounts of at least € 10.0 million for personal injury or property damage and shall provide us with evidence of this upon request.

## **21. Export Control**

The supplier shall provide us as early as possible in writing with all information and data which we require to comply with the applicable foreign trade law in the case of export, shipment and import and, in the case of resale, in the case of re-export of the goods.

## **22. Contract Termination**

22.1 We may terminate the contract with the supplier in whole or in part at any time in writing, in particular if our customer has terminated its contract with us. In such case, the supplier shall only be entitled to remuneration for the services rendered up to the end of the contract.

22.2 If the contract is terminated prematurely for reasons for which the supplier is responsible, we shall be entitled to liquidated damages in the amount of 10% of the order total. We reserve the right to claim higher damages; the supplier reserves the right to prove to us that no or only significantly lower damages have been incurred.

## 23. Concluding Stipulations

23.1 The place of performance is our registered place of business.

23.2 If the supplier is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from and in connection with the contractual relationship shall be our place of business or, at our discretion, the place of business of the supplier. This shall also apply in cases in which the supplier does not have a general place of jurisdiction in this country, has relocated his place of residence or usual place of abode abroad after conclusion of the contract or neither the place of residence nor the usual place of abode of the supplier are known at the time the action is brought.

23.3 German law shall apply to the inclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

23.4 If a particular stipulation of these terms and conditions should be or become ineffective, the effectiveness of the other provisions shall not be affected thereby.

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### Translator's Disclaimer

This document is a translation and as such not legally binding. In case of doubt, the German original should be consulted.