

GENERAL PURCHASE CONDITIONS
of
pewag austria GmbH

Definitions

For purposes of this General Purchase Conditions (in the following referred to as GPC) the term PWA designates pewag austria GmbH and the term „SUPPLIER“, the natural person or legal entity, with whom PWA enters into commercial relationship in order to acquire goods, services or works against remuneration.

General

This GPC form an integrated part of each contract concluded between PWA and SUPPLIER. Terms which are in contradiction or complementary to this GPC are not binding for PWA, even if PWA does not contradict to such terms or if SUPPLIER declares that he is willing to deliver only in accordance with such terms.

If single clauses of this GPC or the agreement are or become ineffective, the commitment of the other provisions and of the contract concluded based on this GPC shall not be effected. The ineffective clause shall be exchanged by such an effective clause, the content of which comes as close as possible to the economical sense of the ineffective clause.

SUPPLIER shall treat the conclusion of the contract as confidential and shall use PWA as a reference in relation to third parties only with written consent of PWA.

Offers

Offers, price calculations, visits, advises and plans of SUPPLIER shall be always free of charge and unbinding for PWA, even if their taking place respectively presentation were caused by a request of PWA. SUPPLIER shall exactly observe in its offers the request of PWA and shall expressly alert PWA of any variations thereof. Bidding documents will not be returned by PWA. Samples shall be made available to PWA free of charge.

Orders

An order of PWA as well as any variation and/or amendment to an order is only valid if expressed in writing. Subsidiary agreements during conclusion of the contract and amendments of the contract after its conclusion are valid only if agreed in writing

An order of PWA is deemed as not accepted by SUPPLIER, if PWA does not receive the written order confirmation within 14 days after the date of the order. Receipt of the goods by PWA without such an order confirmation does not release SUPPLIER from its obligation to provide such a confirmation.

Orders, agreements, subsidiary agreements, reservations, variations or amendments are valid only, if expressly accepted by PWA in writing.

Any assignment of the ordered deliveries to a third party requires the prior written consent of PWA.

Any and all letters, documents, invoices etc produced in context with an order of PWA shall be provided with the complete order number of PWA; any correspondence not provided with this data is in cases of doubt deemed as not delivered.

If SUPPLIER forwards samples, such samples shall become the bases of the contract in respect of quality and design, if PWA does not order other quality or design attributes.

Prices

Agreed prices are deemed as guaranteed fixed prices without VAT, which include any and all expenses of SUPPLIER in context with fulfilment of the delivery or service. This does cover especially any and all costs of transport, insurance, packaging, taxes, customs duties and public fees, which incur in context with the delivery and/or service of SUPPLIER at or to the place of destination. PWA shall only bear such expenses, which are expressly stated as obligation of PWA in the order. For possible extensions or amendments of an order as well as for orders of spare parts the regulation of the main order shall be applicable.

As far as the order does not contain a different regulation, the pricing term „**Free House Designated Place**“, in case of a foreign supplier or in case of a delivery from abroad „**DDP Delivered Duty Paid**“ in accordance to the INCOTERMS 2000 shall apply.

All Prices are fixed prices, subsequent variations of prices or quantities are not permitted without express written consent of PWA.

Method of Payment

Invoices must contain the number and date of the order and shall be delivered to PWA after delivery of the goods by mail. Copies of invoices and invoices for partial delivery shall be indicated as such. VAT must be shown separately in all invoices.

As far as no other agreement is concluded in writing, invoices will be paid within 30 days after receipt of the invoice or after receipt of the goods if this takes place later, less 3% discount (sconto) or after 90 days net. A (sconto) discount is also permitted, if PWA accumulates or withdraws payment up to reasonable extent because of defects.

Invoices showing factual or calculative deficiencies do not cause a payment obligation for PWA until corrected in accordance with PWA and can in case of significant deficiencies also be returned by PWA within the payment period. In this case the payment period does not start prior to receipt of a corrected invoice. In case of a bad performance PWA is entitled to withdraw the total payment until proper fulfilment, whereby such withdrawal shall not lead to losing of rebates, discounts or other payment benefits.

Payments can at option of PWA be effected through cheque or bank transfer. Payment to an Austrian bank along with a transfer order to SUPPLIER is deemed as payment to SUPPLIER. Any bank charges shall be borne by SUPPLIER. Cash on delivery will not be accepted.

PWA is entitled to offset claims against SUPPLIER against claims of SUPPLIER, even before the claim of PWA gets due for payment. SUPPLIER is not entitled to offset his claims against PWA against claims of PWA and is without written consent of PWA also not entitled to assign his claims against PWA to a third party or to instruct a third party with collection of such a claim.

Payment shall not be deemed as acceptance of proper delivery and thus not as waiver of PWA of possible claims because of fulfilment deficiencies, warranty guarantee or indemnity.

If partial delivery is agreed, the payment period for the total delivery does not commence prior to the final partial delivery.

Delivery, Package, Shipment

With regard to execution, volume and partition delivery must comply exactly with the order of PWA.

Costs of an insurance of the goods, especially of conveyance insurance will not be borne by PWA. PWA is „SVS/RVS-Verbotkunde“.

A duly completed delivery note, expressing all data regarding the order has to be attached to all deliveries. Partial, remainder and sample deliveries must be indicated as such.

The address as stated in the order, as well as the delivery time is strictly binding. Early or partial deliveries as well as excess or short delivery are only permitted with prior written consent of PWA. Resulting costs must be borne by SUPPLIER. It is deemed especially as a partial delivery, if such delivery takes place without appropriate delivery and shipment notes or if delivery and shipment notes are incorrect or incomplete or delivered to PWA with delay. In such a case the goods are warehoused at risk and expense of SUPPLIER. The goods are also rejected by PWA, if they do not comply with the specifications in the order.

The delivered goods must be packaged customary and appropriate.

If shipment regulations or shipment conditions are missing, respectively if exceptionally delivery ex stock or ex work has been agreed, the most beneficial shipment or delivery type in favour of PWA has to be chosen.

SUPPLIER is obliged to issue on time movement certificates in accordance with Austrian laws and regulations, if applicable appropriate certificates of origin, as well as all other product certificates and product documents. SUPPLIER must compensate PWA for any and all damages, incurred because of not proper presentation of aforesaid documentation.

Common Austrian Standards (ÖNORMEN) as applicable to a certain delivery, in Austria applicable German Industry Standards and other technical regulation common in context with an order of the type issued by PWA must be met by SUPPLIER.

In the event of disposal of transport packaging by PWA or a customer of PWA, SUPPLIER is obliged to reimburse any such expenses.

Time Limits, Delivery Date, Contract penalty

The stipulated delivery period shall be calculated from the date expressed on the PWA order. Should SUPPLIER for whatever reason not be able to meet the agreed delivery period, SUPPLIER must immediately and in due time inform PWA in writing in this respect and must also notify the reason and the anticipated delay. Such a notification does in no way affect the responsibility of SUPPLIER for fulfilment of the contract in due time.

In case of a default of SUPPLIER PWA is entitled, at option of PWA, to insist on fulfilment of the contract and demand compensation of any delay-damage or in the event of a significant delay declare rescission of the contract also without granting of a period of grace and demand compensation of all damages caused by non-fulfilment.

If an installation or assembly or if a service is connected to the delivery, delivery takes place on-time, if it such a delivery is supplied in due time in a ready for acceptance test condition.

In case of a delivery delay, PWA is further without obligation to prove resulting damages, entitled to charge SUPPLIER for each week commenced 1% of the total price of the order as liquidated damages. Assertion of a damage increasing the total amount of liquidated damages is permitted, even if PWA took over a delayed partial delivery without objection.

If fulfilment of the contract is prevented by an act of god, PWA is entitled to withdraw from the contract in total or partially or to insist on fulfilment of the contract at a later date, without additional claims of SUPPLIER because of this delay.

Risk Taking, Retention of Title

PWA does not accept retention of title by SUPPLIER including an extended retention of title (e.g.: retention of title under advance assignment). PWA does acquire full and unlimited ownership of all goods with delivery respective taking over of the goods by PWA.

Risk taking is regulated in accordance with the agreed Incoterms (see paragraph regarding "Prices" above).

Assignment

SUPPLIER shall assign or pledge its rights under the agreement in total or partial to third parties only with prior written consent of PWA

Dokumentation, Confidentiality

Documents (e.g. drawings, plans, drafts and makeshifts) or workshop facilities, which are provided to SUPPLIER by PWA, shall remain unrestricted property of PWA. SUPPLIER must keep on his own costs in diligent custody, maintain, keep in good condition, replace in case of abrasion and insure against any sort of damage any and all workshop facilities, which are property of PWA.

Any and all workshop facilities, which are property of PWA, must be treated as confidential and shall not be copied or published or otherwise handled in a way that third parties get access nor shall they be used for other purposes as agreed, without prior written consent of PWA. As soon as such items are not required any longer for fulfilment of the order, SUPPLIER shall return them immediately into the free possession of PWA.

SUPPLIER is obliged to keep confidential any and all commercial, technical information and documents, which he became aware of through this agreement and which are not publicly available,

and shall use such items exclusively for performance of the ordered deliveries. SUPPLIER shall oblige in this sense any sub-contractor.

Any supplied materials remain in property of PWA and shall be used by SUPPLIER only for performance of the services and or deliveries ordered by PWA. In case of belabouring or processing of such material, PWA acquires joint property in proportion to the value of the supplied material. If supplied material is processed in such a way that the items of SUPPLIER have to be deemed as the main part, it is still agreed that PWA shall acquire joint property with the time of production.

This regulation shall also be applied to workshop facilities and documents, which are provided to SUPPLIER for the purpose of elaborating of offers. This facilities and documents shall be totally returned to PWA after elaborating of the offer.

Warranty

SUPPLIER guaranties, that the contract goods keep the quality and attributes as expressly specified or as promised in another way or as generally assumed for a period of at least 24 months after delivery and that the contract goods and services are in compliance with all relevant regulations and that they have the fitness for the intended requirement.

The warranty obligation of SUPPLIER covers all delivered goods, even if such goods or parts thereof not produced by SUPPLIER. After removal of a defect and after each attempt for removal by SUPPLIER the warranty period shall commence again. The warranty period shall be interrupted by each written defect notification.

If a contract good is defect, PWA is – even if the defect is of a minor sort – at its own option entitled to either immediately demand substitution or correction or price reduction and compensation of all damages instead of correction. If SUPPLIER does not or not in due time comply with such a demand for substitution, correction, price reduction or damage compensation, PWA is entitled to rescind from the contract.

SUPPLIER herewith expressly waives his objection of delayed defect notification. The obligation to raise a defect notification in the sense of Art 377 ff HGB (Austria Trade Act) is expressly waived. A defect notification can in this sense be raised any time until the end of the warranty period. The period provided by law for institution of legal proceedings shall commence at the end of the warranty period.

Confirmations regarding receipt of goods issued by PWA shall not be deemed as a confirmation that the goods are free of any defects respectively as confirmation that the goods are finally taken over. Taking over of the goods and any examination with regard to quantity and condition and visible defects will take place within an appropriate period after receipt of the goods. A period of at least 6 weeks shall be deemed as appropriate.

In urgent cases, in cases of any threat of immediate damage, if SUPPLIER declines correction and/or substitution, PWA is entitled – without regard to the further liability of SUPPLIER - to let any defects be corrected at costs of SUPPLIER.

If a defect is based on an incident, which is caused by negligence of SUPPLIER, or if an attribute of the contract good is missing, which has been expressly guaranteed, SUPPLIER shall be liable also for any subsequent damages, which incur from the use of the contract good. SUPPLIER will in this respect release PWA also from any respective third party claims.

Compensation, Product Liability

SUPPLIER is obliged to keep PWA harmless against third party claims filed in accordance with Product Liability Regulations as far as the defectiveness of the good is caused by negligence of SUPPLIER or a Sub-Supplier of SUPPLIER. SUPPLIER is further obliged to provide to PWA all information, which is appropriate for delivery of faultless good (warnings, approval regulation etc).

If SUPPLIER subsequently receives information about circumstances, which could cause a product fault in the sense of Product Liability Regulations, SUPPLIER must notify PWA of such circumstances immediately. Restrictions of whatever sort regarding the liability of SUPPLIER under Product Liability Regulations as well as restrictions of whatever sort regarding the compensation claims of PWA under Product Liability Regulation are not accepted.

In addition PWA is entitled to demand from SUPPLIER compensation of any damage caused by the negligence of SUPPLIER, including of loss of profit. SUPPLIER shall keep PWA harmless against any and all third party claims based on warranty or damage compensation and shall reimburse any and all costs which incurred to PWA in context with defence measures against any such claims. This does also apply to any patent, trademark or copyright dispute arising in context with contract good.

Form

Variations and Amendments of this GPC as well as of the other contractual arrangements are valid only if in writing. The same shall apply for any change as to this requirement of Written Form.

Jurisdiction and Applicable Law

For all disputes arising from this agreement Austrian Law shall be applicable. Application of the UN Convention of the United Nations regarding Contracts of the International Sale of Goods is excluded. Contract Language is English. All disputes arising directly or indirectly from this agreement shall be decided by the competent court in Graz. PWA is entitled to bring an action also before another court competent for SUPPLIER.

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