

GENERAL PURCHASE CONDITIONS  
of  
**pewag engineering GmbH**

**Definitions**

For purposes of this General Purchase Conditions (in the following referred to as GPC) the term PWE designates pewag engineering GmbH and the term „SUPPLIER“, the natural person or legal entity, with whom PWE 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 PWE and SUPPLIER. Terms which are in contradiction or complementary to this GPC are not binding for PWE, even if PWE 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 PWE as a reference in relation to third parties only with written consent of PWE.

**Offers**

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

**Orders**

An order of PWE 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 PWE is deemed as not accepted by SUPPLIER, if PWE does not receive the written order confirmation within 14 days after the date of the order. Receipt of the goods by PWE 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 PWE in writing.

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

Any and all letters, documents, invoices etc produced in context with an order of PWE shall be provided with the complete order number of PWE; 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 PWE 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. PWE shall only bear such expenses, which are expressly stated as obligation of PWE 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 PWE.

### **Method of Payment**

Invoices must contain the number and date of the order and shall be delivered to PWE 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 PWE accumulates or withdraws payment up to reasonable extent because of defects.

Invoices showing factual or calculative deficiencies do not cause a payment obligation for PWE until corrected in accordance with PWE and can in case of significant deficiencies also be returned by PWE 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 PWE 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 PWE 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.

PWE is entitled to offset claims against SUPPLIER against claims of SUPPLIER, even before the claim of PWE gets due for payment. SUPPLIER is not entitled to offset his claims against PWE against claims of PWE and is without written consent of PWE also not entitled to assign his claims against PWE 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 PWE 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 PWE.

Costs of an insurance of the goods, especially of conveyance insurance will not be borne by PWE. PWE 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 PWE. 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 PWE with delay. In such a case the goods are warehoused at risk and expense of SUPPLIER. The goods are also rejected by PWE, 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 PWE 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 PWE 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 PWE must be met by SUPPLIER.

In the event of disposal of transport packaging by PWE or a customer of PWE, 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 PWE order. Should SUPPLIER for whatever reason not be able to meet the agreed delivery period, SUPPLIER must immediately and in due time inform PWE 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 PWE is entitled, at option of PWE, 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, PWE 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 PWE took over a delayed partial delivery without objection.

If fulfilment of the contract is prevented by an act of god, PWE 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**

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

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 PWE

#### **Dokumentation, Confidentiality**

Documents (e.g. drawings, plans, drafts and makeshifts) or workshop facilities, which are provided to SUPPLIER by PWE, shall remain unrestricted property of PWE. 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 PWE.

Any and all workshop facilities, which are property of PWE, 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 PWE. 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 PWE.

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 PWE and shall be used by SUPPLIER only for performance of the services and or deliveries ordered by PWE. In case of belabouring or processing of such material, PWE 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 PWE 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 PWE 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, PWE 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, PWE 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 of the Code of Enterprises (Unternehmensgesetzbuch UGB) 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 PWE 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, PWE 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 PWE also from any respective third party claims.

### **Compensation, Product Liability**

SUPPLIER is obliged to keep PWE 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 PWE 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 PWE 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 PWE under Product Liability Regulation are not accepted.

In addition PWE is entitled to demand from SUPPLIER compensation of any damage caused by the negligence of SUPPLIER, including of loss of profit. SUPPLIER shall keep PWE harmless against any and all third party claims based on warranty or damage compensation and shall reimburse any and all costs which incurred to PWE 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. PWE is entitled to bring an action also before another court competent for SUPPLIER.

January 2007