

General Conditions of Purchase (GCP 04/2019) Last revised: April 2019

Unless otherwise expressly agreed in writing, the following conditions shall apply.

1. PURCHASE ORDER

Each purchase order and any variation of or addition to it shall not be legally binding on the Purchaser - please refer to the purchase order for the company name and address - unless it was sent by the Purchaser's relevant department in writing by telefax or email, whether an offer was submitted or not. Any other statement shall only be considered by the Contractor after promptly informing the relevant purchasing department and obtaining a written acknowledgement of such statement. The Contractor shall be deemed to have accepted these Purchaser's Conditions of Purchase at the latest upon commencement of performance of the Contractor's obligations under the purchase order. The Contractor's terms and conditions (e.g. offers, Conditions of Sale) shall not be binding on the Purchaser unless expressly acknowledged in writing by the Purchaser. No oral or telephone order or variation of or addition to an order placed by the Purchaser shall be binding on the Purchaser before receipt of Purchaser's written or telefaxed confirmation.

The order date is the date the order was placed. Contractual delivery and service periods shall commence on the order date. The order shall be confirmed or rejected in writing by the Contractor within ten days of the order date. Should the Contractor fail to confirm the order to the Purchaser within the prescribed period, the agreement shall become effective with the stated contents of the order.

The Purchaser reserves the right to withdraw from the order without stating the reasons until the order has been acknowledged through a confirmation of order applying to the entire contents of the order, without the Contractor being entitled to assert any claim on whatever grounds. Withdrawal shall be deemed to have been submitted on time if it was sent before receipt of the Contractor's acceptance.

Any variation of the order must be clearly marked and shall not be valid unless expressly confirmed in writing by the Purchaser. Unconditional acceptance of the goods and/or services shall in no case be construed as such approval.

2. PRICES

Prices are fixed prices excluding VAT, including all taxes, duties etc. and including all expenditures incurred by the Contractor in connection with the performance of deliveries and services, such as transport and insurance etc.

Unless stipulated otherwise in the order, prices are quoted "Delivered at Place DAP" (Incoterms 2010). The price includes all costs for related documentation, technical inspection, painting, corrosion protection, marking etc. The costs and responsibilities for export customs clearance (with the Contractor's own documentation) for shipments to foreign countries shall also be borne by the Contractor.

Should the Contractor claim additional payments for deliveries and services already ordered or for additional services to be provided by the Contractor, the Contractor shall not be entitled to suspend or refuse further delivery of goods and/or services. The same applies where goods and/or services have been basically ordered but the price is to be agreed on at a later date - whatever the reason. This shall also apply to controversial or disputed claims of the Contractor in connection with additional deliveries and services and/or payments in connection with the order including additions and extensions.

3. PAYMENT

Unless otherwise agreed, invoices shall be paid by the Purchaser, at its option, 3%/21, 2%/30 or net 60 after a valid invoice has been provided (see Article 4) and if all requirements stated in the order have been met, including, but not limited to, correct documentation. No C.O.D. consignments will be accepted except by express written agreement. The Purchaser has the right to withhold due payment of invoices in the event of complaints about the goods delivered /services performed. Payment of an invoice by the Purchaser shall not be construed as an acknowledgement of proper delivery of goods or performance of services and thus not as a waiver of any potential claims relating to performance, warranty, damages etc.

In the event of provable payment delay by the Purchaser, the Contractor shall be entitled to charge interest at a rate of 2% p.a. on the outstanding amount from the end of the payment period. Such a claim must be asserted in writing within 4 weeks after receipt of the invoice. Any claims for damages are excluded.

4. INVOICES, OFFSETTING

For each order placed, deliveries and invoicing must be carried out separately. An original invoice must be submitted to the Purchaser (please refer to the purchase order for the company name and address), including a copy of the notification of delivery or delivery note; construction invoices must be supplied in five copies, and invoices for services must include a confirmation of service. Article 5 shall additionally apply to shipments subject to a customs duty.

Contractors from an EU country must also indicate

- applicable tax rate or reference to tax-exemption status and movement of goods
- date of issue
- invoice number
- Contractor's VAT registration number

in all invoices, in addition to the statutory requirements.

The Purchaser shall be entitled to offset claims against claims companies in which HABAU directly or indirectly holds an interest of at least 50 % (companies of the HABAU Group) have against the supplier or Contractor. Furthermore, the Purchaser shall be entitled to offset its claims against counterclaims the supplier or the Contractor has against any of the above-mentioned companies of the HABAU Group. Any company in which HABAU directly or indirectly holds an interest of at least 50 % and which is entitled to use the registered trade mark, the logo, indicating HABAU, is a member of the HABAU Group.

5. PACKAGING AND SHIPMENT

The Purchaser's shipping and packaging instructions shall apply. If there are none, the Contractor will be entitled to ask the Purchaser to provide such instructions. Where a critical deadline has to be met, approval from the Purchaser's purchasing department must be obtained before using special transport measures (e.g. air freight, express service), failing which the Contractor must bear the costs. The Contractor must also bear the costs if any of the above-mentioned special transport measures is necessary to avoid or minimize a delay attributable to the Contractor. The Contractor must provide a valid proof of preferential treatment (such as trade certificate, certificate of origin etc.). Special Purchaser stipulations must be complied with. Unless otherwise stated in the Purchaser's shipping instructions, there should be no indication of value in the freight documentation accompanying the goods.

The Purchaser will not pay the cost of transport insurance unless it has been expressly agreed. In the event of non-compliance with the Purchaser's shipping, packing, and customs clearance or documentation requirements, all risk, damage and cost shall be at the expense of the Contractor, and due payment of invoices will be postponed until any missing documentation has been provided. Products subject to regulations such as hazardous goods must be classified, packed and labelled in accordance with the relevant regulations, and all statutory safety data sheets must be enclosed.

6. DEADLINES

Delivery dates are binding. Goods shall not be delivered/services shall not be performed before the delivery date without the written consent of the Purchaser; early delivery shall not entitle the Contractor to earlier receipt of payment.

The Contractor shall promptly inform the Purchaser if a delivery delay is foreseeable. The Purchaser must be promptly provided with a full written report specifying the reason and the extent of the delay.

For goods and services, the delivery date is the day the Contractor has fulfilled all of its obligations under the contract (including documentation) and the goods delivered/services performed are free from defects.

If the Contractor does not comply with the agreed time periods or meet the intermediate or final deadlines set forth in the contract, the following penalties, in each case to be calculated from the total contract value, shall apply for the time that passes until the date of actual delivery. The Purchaser may offset against any payment hereunder such penalties owed by the Contractor. All conditions shall apply concomitantly.

- Goods and Services and Engineering Services
Penalty equal to 1% per week or part thereof for delay, up to a maximum of 10% of the total order value;
- Documentation:
Penalty equal to 0.5% per week or part thereof for delay, up to a maximum of 5% of the total order value.

The obligation to pay a contractual penalty shall commence for the Contractor at the time default with respect to timely delivery first occurs, in which case any fault of the Contractor shall not apply.

In the event of a defective delivery or defective goods, the time between acceptance and the official complaint by the Purchaser shall not be subject to a contractual penalty. The Purchaser is not required to reserve its right to claim contractual penalty when accepting goods delivered/services performed.

The payment of a contractual penalty shall not relieve the Contractor from its obligation to perform and any related liabilities. The Purchaser may claim damages and/or loss arising from or in connection with the Contractor's delay if the damage or loss exceeds the contractual penalty.

7. WARRANTY / GUARANTEE

The Contractor warrants and guarantees for the warranty/guarantee period that all goods delivered and services provided will have the features that are guaranteed and normally expected and that they are complete and suitable for the intended purpose. This period does not expire until at least 3 years after acceptance of the service by the Purchaser's customer but not before the end of all warranty/guarantee obligations of the Purchaser towards its customer for the goods and services provided by the Contractor. Purchaser's obligations to test, inspect or give notice of defects, in particular according to §§ 377 UGB (Austrian Commercial Code) and 378 UGB, are expressly excluded. The presumption of defectiveness according to § 924 ABGB (Austrian Civil Code) is applicable during the entire warranty/guarantee period.

The Purchaser shall, to the extent permitted by law, be entitled to choose among the available forms of remedy in connection with warranty for defects, regardless of the type of defect. If the Purchaser asserts a claim for defective goods/services within the warranty period, the period for asserting the warranty claim will be extended by two years from the warranty expiry date.

8. CONTRACTOR'S LIABILITY AND PRODUCT LIABILITY

The Contractor shall be fully liable towards the Purchaser in accordance with the legal provisions in any event.

The Contractor shall indemnify and hold the Purchaser harmless from and against any cost, damage and loss (including consequential damage such as downtime, penalties, liquidated damages, loss of production and loss of profit) that was directly or indirectly caused by the Contractor or Contractor's employees or subcontractors.

The Contractor shall be liable towards the Purchaser at least to the same extent and for the same period as the Purchaser will be liable towards third parties, in particular with respect to liability, warranty and product liability.

In the event of defects in the delivered goods as defined by the Product Liability Act that require the Purchaser's intervention, the Contractor shall reimburse the Purchaser for all expenses and hold the Purchaser harmless from any claim for damages.

The Contractor is obligated to provide a complete and easily understandable user manual, keep all necessary documents, and ensure exact product observation. The Purchaser is furthermore obliged to implement product improvements on its own initiative, whenever the Purchaser becomes aware of any potential problems that entail liability issues.

9. EXPORT LICENCE

The Contractor shall obtain at its own expense all export licences required for the export of the goods and services, in particular for exports to the end customer's country.

When the order is placed, the Contractor shall ensure that all ordered goods can be supplied and there are no statutory or other limitations preventing full delivery and service; the Contractor shall fully indemnify and hold the Purchaser and/or the end customer harmless from and against all third-party claims and reimburse the Purchaser for any expenses incurred. When the order is placed, the Contractor shall inform the Purchaser as soon as possible of any new export restrictions which may arise and submit details of alternative solutions free of charge.

10. INDUSTRIAL PROPERTY RIGHTS

The Contractor shall ensure that the use of its goods and services is in no way affected by any third-party claims in connection with trademarks, copyrights, patents, contract territories, etc., and that no boycott clauses, black lists etc. are violated. The Contractor shall promptly inform the Purchaser of any infringement of third parties' rights or boycott-related or black list violations etc. In this respect, the Contractor is liable to hold the Purchaser and/or the end customer harmless from all third-party claims without limitations and to refund it for any expenses incurred.

The Contractor shall return to the Purchaser on its own initiative all documents pertaining to inquiries with offers or after successful completion of the order.

Offers shall be processed at no charge.

It is understood that when quotations are submitted technical documentation may be made available to third parties (engineering partners, customers etc.), if necessary, without any entitlement of the Purchaser. Quotation documentation will not be returned.

The Contractor declares and warrants that the goods and services delivered, including documentation and software, do not contain any reservation of title, including third party title, and that it will transfer unrestricted ownership in the goods including documentation and used software to the customer upon delivery.

The Contractor understands and agrees that its goods and services (including documentation and software) will become part of a larger object (plant or item), with its goods and services being integrated into the larger object (plant or item) of the Purchaser and/or the Purchaser's customer and thus the property of the larger object. The Contractor therefore expressly warrants that the customer will not be prevented from using the equipment (goods) through any property claim and/or usage restriction whatsoever.

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11. CONFIDENTIALITY

The Contractor shall treat all information and documents of a commercial and technical nature that are directly or indirectly made available to the Contractor by the Purchaser and/or the end customer as well as any additional information provided by the Contractor subsequently during the quoting and order handling process as confidential and use such information solely for the performance of the contract.

12. COPYRIGHT

The property right and the exclusive right of use for the drawings, information, know-how and software made available to the Contractor by the Purchaser shall remain with the Purchaser. The Contractor acknowledges the Purchaser's exclusive copyright.

13. TERMINATION OF CONTRACT

In the event of a breach of contract, the Purchaser may withdraw from the contract in whole or in part after granting the Contractor a reasonable respite. Breach includes in particular intermediate or final delivery delays, unauthorised subcontracting or other defects that jeopardize contract fulfilment by the Purchaser towards its contract partners.

In such case the Purchaser shall be entitled to arrange for substitute performance to be made at the Contractor's expense with regard to the deliveries and services not performed or poorly performed by the Contractor. The Purchaser may either directly invoice the costs incurred in this connection (payment deadline 30 days after the invoice date) or deduct them from the Purchaser's next due payment to the Contractor.

If the exercise of the right to substitute performance requires access to any proprietary rights, documents (such as e.g. shop drawings, calculations) or any other information, the Contractor hereby undertakes to provide the Purchaser with the necessary rights, documents and information. The Purchaser is entitled at any time to withdraw from the contract in whole or in part even without the Contractor being at fault. In such a case the Purchaser shall, under exclusion of any further liability, pay the Contractor the contract price in proportion to the already performed deliveries and services, and additionally reimburse the Contractor for any direct costs of deliveries and services in process or cancellation of subcontracts as evidenced. Following notification of withdrawal, the Contractor shall undertake all efforts to keep the costs reimbursable to the Purchaser as low as possible. Should the Purchaser withdraw from the contract, the Purchaser and/or the end customer shall be entitled to the goods and services delivered by the Contractor until that time. If the contract is terminated for a reason attributable to the Contractor, all costs in relation with the use shall be borne by the Contractor.

The Purchaser may at any time withdraw from the contract with immediate effect without granting a respite if any of the following applies: collusion or forbidden agreements, gross violation of any individual provision of this contract, missing a contractual date by more than 6 working days, improper production or unprofessional work or goods and services and/or use of unsuitable material or deviation from the contractual scope of goods and services, non-use of contractually agreed production methods, Contractor's failure to start delivering its goods and/or services immediately after Purchaser's instruction to do so, or Contractor's limited or non-existing business license.

In the cases of force majeure, including, but not limited to, strikes, delays or failure by other companies involved in the overall product, the Purchaser will be entitled to withdraw from the contract, in whole or in part, or to demand delivery at a later date. The Contractor will not be entitled to be paid any compensation by the Purchaser in this connection.

Termination or cancellation (in whole or in part) of the order/contract between the Purchaser and its customer entitles the Purchaser to cancel/terminate the contract with the Contractor. Such cancellation/termination does not entitle the Purchaser to claim a cost reimbursement or damages and loss.

In case of substitute performance/performance by a third party the Purchaser shall be entitled to impose a surcharge at a rate of 15%.

14. MISCELLANEOUS

The Purchaser reserves the right, also on behalf of its customer and the end customer and/or their inspection bodies, to carry out inspections at the offices, the production sites and the warehouses of the Contractor and its subcontractors at any time, e.g. during design, planning, production and delivery preparations, delivery time checks as well as technical intermediate and final inspections (also packing controls) and to reject faulty documentation or defective material. These controls and inspections do not relieve the Contractor of its responsibility and shall not be construed as a permission to carry out a delivery/perform a service.

If the Purchaser realizes or foresees that a deadline, a contractual date or the quality of the Contractor's goods and services are at risk, the Purchaser will notify the Contractor and set a reasonable deadline for remedying the deficiency identified by the Purchaser, taking the circumstances of the project into account.

If in the Purchaser's opinion the Contractor is or will be not successful, the Purchaser will be entitled to take measures to ensure compliance with deadlines and quality assurance or at least to minimize the negative effects at the Contractor's expense. In case of emergency or imminent danger the Purchaser may do so without granting a respite.

The Contractor's subcontractors must without exception be disclosed to the Purchaser in writing in due time and are subject to the written approval of the Purchaser.

Ownership will be transferred to the Purchaser simultaneously with the passage of risk.

Third parties that make representations to the Purchaser on behalf of the Contractor shall be deemed to be authorised without limitations.

Any additional costs incurred in connection with the execution of the order that are neither covered by an agreement nor by INCOTERMS 2010 shall be borne by the Contractor.

At the Purchaser's request the Contractor shall provide suitable storage for up to 3 months to the Purchaser at the Purchaser's risk and expense.

Unrestricted and unencumbered ownership in the goods delivered and services provided to the Purchaser will be transferred to the Purchaser. Any restriction by the Contractor in this regard shall be invalid also without express objection by the Purchaser.

The Contractor shall also be liable for compliance with these General Conditions of Purchase by its subcontractors. The other statutory rights of the Purchaser remain unaffected by the provisions of these General Conditions of Purchase.

15. BUSINESS ETHICS / ANTI-CORRUPTION CLAUSE

The Contractor expressly declares and undertakes that it will comply with the relevant applicable laws, refrain from entering into restrictive agreements, corrupt activities and bribery and money laundering, respect the fundamental rights of its employees, prevent child labour and ensure employee health and safety. Furthermore, the Contractor declares and undertakes that it will comply with environmental protection legislation, norms, and national and international standards.

The Contractor declares and undertakes that it will not directly or indirectly offer any benefits whatsoever to any third party or directly or indirectly accept any gifts or payments or otherwise obtain, generate or accept any benefits which are or could be considered unlawful practice or bribe.

The Contractor shall also comply with the Purchaser's Code of Conduct for Subcontractors and Suppliers as amended, which is available on the Purchaser's website.

The Purchaser shall pass the above-mentioned declarations and obligations on to its subcontractors and suppliers.

In the event of a breach the Purchaser will be entitled to terminate the contract with immediate effect. Moreover, the Contractor will indemnify and hold the Purchaser harmless.

16. DATA PROTECTION

The Contractor undertakes to comply with the General Data Protection Regulation (GDPR). The legal basis for the processing of personal data to perform this contract is Art.6 para. 1 lit. b GDPR.

More information on data protection is available at <https://www.habau.at/de/datenschutz>.

17. LEGAL DISPUTES / GOVERNING LAW

In the event of a dispute the Purchaser may, at its option, bring the dispute before an arbitral tribunal of the Vienna Federal Chamber of Commerce and Industry (place of arbitration: Vienna, language of the proceedings: English) or bring an action in a regular court.

Should differences of opinion over any technical terms arise, the Purchaser or the Contractor may seek expertise from a court-certified expert jointly appointed by both parties. The expert's report shall be binding on both parties. The costs of the expert's report shall be borne by the unsuccessful party.

In the case of a dispute, even arbitration or legal proceedings or invoice disputes, the Contractor will not be entitled to cease performance of the work or to withhold information or goods and/or services under the contract (order).

The Contractor expressly waives all withholding rights and/or rights to refuse a performance.

The exclusive place of jurisdiction for all disputes arising in connection with any valid contractual relationship between the Contractor and the Purchaser, which forms the basis of these Conditions (including any question regarding the validity of the agreement itself), shall be the Purchaser's place of business.

The agreement shall be governed by and interpreted in accordance with the Austrian laws, giving no effect to national and international transfer standards and the UN Convention on Contracts for the International Sale of Goods of April 11, 1980.