

GENERAL TERMS AND CONDITIONS  
OF PURCHASE  
of  
**pewag austria GmbH**

**Section 1 Definitions**

1. For the purposes of these General Terms and Conditions of Purchase (hereinafter referred to as "GTCPs"), "PWA" shall refer to pewag austria GmbH and the term "Supplier" shall refer to all natural persons or legal entities with which PWA shall enter into business relations for the purpose of acquiring goods, services or works for a consideration.

**Section 2 General provisions**

1. These GTCPs shall form an integral part of all contracts concluded between PWA and a Supplier. Any terms and conditions derogating from or supplementing these GTCPs shall not be binding upon PWA, even if PWA shall not contradict the same or if the Supplier shall declare that it intends only to deliver under its own terms and conditions.
2. In the event that any term of these GTCPs or the other contractual agreements shall be or become invalid or inoperable, this shall not affect the validity of the remaining terms hereof. The parties shall be under a duty to replace any invalid or inoperable provision by such valid or operable term which comes as close as possible in economic outcome to the invalid or inoperable provision which it replaces.
3. The Supplier shall treat conclusion of contract confidentially and may only name PWA in relation to third parties as a reference subject to PWA's written consent.

**Section 3 Offers**

1. Offers, cost estimates, visits, consultations and plans of the Supplier shall always be free of charge and non-binding in relation to PWA even if they have been actioned or submitted in response to a request from PWA. The Supplier must, when submitting offers, precisely adhere to PWA's request and expressly point out any deviations therefrom. Offer documents shall not be returned by PWA. Specimens shall be provided to PWA free of charge.

**Section 4 Orders**

1. Orders from PWA as well as amendments and/or additions thereto shall only be valid when in writing. Subsidiary agreements upon conclusion of contract as well as contractual additions following conclusion of contract shall also only be valid when in writing.
2. An order from PWA shall be deemed as not having been accepted by the Supplier if the corresponding written order confirmation has not been received by PWA within a period of 14 days from the order date. Acceptance of the subject of performance by PWA without such order confirmation shall not release the Supplier from its obligation to transmit the same.
3. Orders, agreements and subsidiary agreements, provisos, amendments or additions not agreed with employees being authorized representatives of PWA shall only be valid if they are expressly acknowledged in writing by PWA.
4. The assignment or subcontracting of goods and services ordered to third parties shall require the written consent of PWA.
5. All letters, documents, invoices, etc., prepared in connection with orders of PWA must bear the full PWA order number; notifications and other documents without such indication shall in the event of doubt be deemed as not having been received.

6. If the Supplier transmits samples of goods, they shall form the basis of the contract in terms of specification and quality unless PWA requests different specification or quality features.

## **Section 5 Prices**

1. The agreed prices shall be guaranteed fixed prices excluding value added tax, which shall comprise all expenses of the Supplier in connection with fulfilment of goods and services. This shall include in particular all costs of transportation, insurance, packaging, taxes, customs duties and levies associated with the goods and services of the Supplier at or to a destination. PWA shall only bear such costs which are expressly stated in the order as being a liability of PWA. With regard to any extensions or additions to orders, as well as the ordering of replacement parts, the terms and conditions of the main order shall apply.
2. In so far as the order does not otherwise stipulate, pricing shall be "free to the stated address", and in respect of foreign Suppliers/delivery from abroad, "DDP delivered duty paid", respectively according to INCOTERMS 2000.
3. Prices shall be fixed prices, and any retrospective price and quantity changes shall not be permitted without the written consent of PWA.

## **Section 6 Payment terms**

1. Invoices shall be sent by post following despatch of goods, indicating the PWA order number and the order date. Copy invoices and part invoices shall be identified as such. All invoices must show statutory value added tax separately.
2. In so far as not otherwise agreed in writing, invoices shall be paid by PWA within 30 days of receipt of invoice or goods, whichever is the later, subject to 3% discount, or 90 days net. Deduction of a discount shall also be permissible if PWA undertakes offsetting or retains payments in a reasonable amount due to defects.
3. Invoices containing material or arithmetical inaccuracies or errors shall not be due for payment until they have been corrected in consultation with PWA and, where they are grossly inaccurate, may be returned by PWA within the payment period. In such event, the payment period shall not begin to run until the date of receipt of the corrected invoice. In the case of a defect of service, PWA shall be entitled to withhold payment in full until due and proper fulfilment, whereby this shall be without any loss of reductions, discounts or similar payment advantages.
4. As PWA shall see fit, payments may be made by cheque or bank transfer. Payment to an Austrian bank with simultaneous transfer instruction to the Supplier shall be deemed effective payment to the Supplier. All bank charges shall be borne by the Supplier. No cash-on-delivery consignment shall be accepted.
5. PWA shall be entitled to offset claims against the Supplier against claims of the latter even if PWA's claim is not yet due. The Supplier shall not be entitled to offset its own claims against PWA against claims of PWA and shall further not be entitled to assign its claims against PWA without the written consent of the latter, nor to arrange for the same to be collected by a third party.
6. Payment shall not signify acknowledgement that the goods are in due and proper form and thus shall not mean a waiver on the part of PWA of claims held by PWA due to performance defects in connection with warranty, guarantee or damages.
7. In the event that part deliveries are agreed, the payment period for all part deliveries shall only commence upon the final part delivery.

## **Section 7 Delivery, packaging, despatch**

1. In terms of specification, volume and apportionment across part deliveries, a delivery must comply precisely with PWA's order.
2. The cost of insuring the goods, in particular freight-forwarding insurance, shall not be borne by PWA. PWA is a so-called "prohibited customer" in terms of shipping and carriage insurance.
3. All deliveries must be accompanied by a fully-completed delivery note with precise indications of all order details. Part, residual and specimen consignments must be identified as such.
4. The delivery address indicated in the order as well as the indicated delivery time shall be binding. Advance/part deliveries as well as higher or lower quantities shall only be permissible with the prior written consent of PWA. Resulting additional costs shall be borne by the Supplier. Part delivery shall also be deemed given in particular if it takes place without corresponding delivery and despatch documents or the delivery and despatch documents are incorrect or incomplete or are received late by PWA. In such an event, the goods shall be stored at the risk and cost of the Supplier. Neither shall PWA accept the goods if they do not correspond to the specifications in the order.
5. The delivered goods must be packaged properly and in the manner usual in the trade.
6. In the event that despatch specifications or terms are absent or, by way of exception, delivery ex-warehouse or ex-works has been agreed, the most advantageous shipping and delivery modes for PWA must be selected.
7. The Supplier shall be under a duty to submit in a timely manner and in due form movement certificates corresponding to Austrian laws and regulations, plus, where appropriate, duly-issued certificates of origin as well as other attestations and documents relating to the goods. The Supplier shall fully indemnify PWA and hold PWA harmless in respect of all prejudice arising as a result of failure to observe the despatch specifications and/or failure to duly present the aforementioned documentation.
8. The Austrian "ÖNORM" Standards usually applicable to the respective orders, the usual German Industrial Standards (DIN) applicable in Austria to the respective order and other technical regulations which are usual in the context of the type of respective order placed must be observed by the Supplier.
9. Where transport packaging is disposed of by PWA or customers of PWA, the Supplier undertakes to make corresponding payment of the disposal costs.

#### **Section 8 Time periods, delivery deadlines, contractual penalty**

1. The prescribed delivery period shall begin to run from the date on PWA's order. In the event that, for any reasons whatsoever, the agreed delivery period cannot be observed, PWA must be notified thereof immediately and on a timely basis in writing, whereby the reason for and anticipated duration of the delay must be indicated. Such a notification shall not affect the Supplier's responsibility for timely contractual fulfilment.
2. In the event of default on the part of the Supplier, PWA shall be entitled, as it shall see fit, to request contractual fulfilment and indemnification of the loss suffered due to the delay, or, in the event of extensive delays, to withdraw from the contract also without setting any extension of time and to claim damages for non-fulfilment.
3. With regard to the timeliness of deliveries involving setting up or assembly, as well as the rendering of services, the time of provision in a condition ready for formal acceptance shall be determining.
4. Furthermore, PWA shall be entitled, without providing documentary evidence of the loss suffered, to charge for each week or part thereof of delivery default a total of 1% of the total order price by way of contractual penalty. The right to assert additional damages remains

expressly reserved, even if a delayed part delivery has been accepted unconditionally by PWA.

5. In the event that contractual fulfilment is impeded due to an event of force majeure, PWA shall be entitled to withdraw either wholly or in part from the contract or to request contractual fulfilment at a later date, whereby the Supplier shall not accrue any additional claims based on the delay arising.

#### **Section 9      Transfer of risk, retention of title**

1. PWA shall not recognize any retention of title on the part of the Supplier, including extended retention of title (e.g. retention of title with advance assignment). Upon handover to/takeover by PWA, all goods shall pass into the unrestricted ownership of PWA.
2. Transfer of risk shall be based on the provisions of the underlying Incoterms (see under "Prices", above).

#### **Section 10     Assignment**

1. The Supplier may only transfer or pledge its rights under this contract, whether wholly or in part, to third parties with the prior written consent of PWA.

#### **Section 11     Documentation, confidentiality**

1. Documents (e.g. drawings, plans, drafts and auxiliary material) or production materials which PWA shall provide to the Supplier shall remain in the exclusive ownership of PWA. The Supplier must carefully hold in safekeeping, service and maintain at its own expense the production materials and documents owned by PWA, as well as replace the same in the event of wear and tear and insure the same against any loss or damage.
2. The production materials and documents owned by PWA must be treated as strictly confidential and may be neither reproduced nor published nor otherwise rendered accessible to third parties nor used for any purpose other than the agreed purpose without the written consent of PWA. As soon as the said items are no longer required for the purpose of executing the order, they must be immediately surrendered to PWA for the purpose of free disposal by the latter.
3. The Supplier undertakes to maintain confidentiality in respect of commercial and technical information and documents not known to the general public of which it shall become aware through the business relationship with PWA, and to use the same exclusively for the purpose of providing the goods and services ordered. Such obligations must be imposed upon any sub-suppliers.
4. Material provided shall remain in the ownership of PWA and may only be used by the Supplier in order to render the services commissioned by PWA. In the event of treatment or processing of the said material, PWA shall acquire co-ownership in proportion to the value of the material provided. If processing is undertaken in such manner that the items of the Supplier are to be considered the principal item, it shall be deemed agreed that PWA shall acquire pro-rata co-ownership in respect of the entire item immediately upon production.
5. The above provisions shall also apply with regard to production materials or documents provided to the Supplier for the purpose of preparing offers. These must be returned in full once the offer has been generated.

#### **Section 12     Warranty**

1. The Supplier guarantees that the goods shall fulfil the expressly-specified or otherwise-warranted or generally-presumed characteristics and the relevant regulations for a period of 24 months following delivery, and also guarantees the suitability of its goods and services for requirements in the specific instance in question.

2. The warranty obligation of the Supplier shall relate to all goods supplied by the Supplier, even if such goods or parts thereof were not produced by the Supplier. Following remedy of defects and following each attempt at remedy by the Supplier, the stated period shall begin to run anew. The warranty period shall be suspended as a result of any written notice of defects.
3. If goods are defective, then even in the case of minor defects, PWA may, as it sees fit, request immediate replacement delivery or rectification or price reduction as well as damages in place of betterment. In the event that the Supplier fails to comply with the request of PWA for replacement delivery, rectification, price reduction or damages, or does not duly comply with such request within the time period fixed, PWA may withdraw from the contract.
4. The Supplier waives any plea of late notice of defects. The duty to give notice of defects pursuant to Section 377 of the Austrian Business Enterprise Code (*Unternehmensgesetzbuch*, UGB) is hereby expressly waived. Within this context, notice of defects may be issued at any time up to the end of the warranty period. The statutory periods for judicial assertion of warranty claims shall begin to run at the end of the warranty period.
5. Acknowledgement of receipt in respect of acceptance of goods by PWA shall not be deemed confirmation as to freedom of defects/definitive takeover of the goods delivered. Takeover of the goods as well as examination with regard to quantity and condition and any visible defects shall take place within a reasonable period following receipt of goods, whereby a period of at least 6 weeks shall in any event be deemed reasonable.
6. In cases of urgency, in the event of imminent danger, where betterment and/or subsequent delivery are rejected, PWA shall be entitled to arrange for the defects to be remedied at the cost of the Supplier, notwithstanding the Supplier's further liability.
7. If a defect is based on a circumstance attributable to the Supplier, or if the goods supplied lack a warranted characteristic, the Supplier shall also be liable for consequential losses arising from use of its goods or works. The Supplier shall indemnify PWA in full against claims of third parties resulting therefrom.

### **Section 13 Damages and product liability**

1. The Supplier undertakes to indemnify PWA in full and hold PWA fully harmless in the event of a claim being made against PWA under the Austrian Product Liability Act (*Produkthaftungsgesetz*, PHG), in so far as the defectiveness of the goods is attributable to the Supplier or any sub-supplier of the Supplier. The Supplier further undertakes to provide PWA with all information which shall be expedient for the purpose of delivering error-free goods (warning indications, licensing provisions, etc.).
2. In the event that the Supplier should retrospectively become aware of circumstances which could establish a product error within the meaning of the Austrian Product Liability Act, the Supplier hereby undertakes to immediately notify PWA if it becomes aware of any such circumstances. Restrictions of any type on the obligations incumbent upon the Supplier under the Austrian Product Liability Act as well as restrictions of any kind on the damages claims held by PWA under the said Act or other provisions shall not be recognized.
3. Furthermore, PWA shall hold against the Supplier a claim to damages in respect of any loss incurred by PWA due to fault on the part of the Supplier, including loss of profit. The Supplier shall indemnify PWA and hold PWA harmless in respect of all warranty and damages claims of third parties and also indemnify all costs incurred by PWA in defending any claim on such basis. This shall also apply with regard to any disputes arising in connection with the goods supplied under patent law, copyright or trademark law.

### **Section 14 Written form**

1. Any amendments and additions to these GTCPs and the other contractual agreements made shall only be valid when in writing. The same shall apply with regard to any derogation from

the written-form requirement.

**Section 15 Place of jurisdiction and applicable law**

1. Graz is agreed as place of jurisdiction for both parties. However, PWA shall be entitled also to sue the Supplier before any other court having statutory competence. Austrian law is deemed agreed. The application of UN sales law is expressly excluded.

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