



## **General Terms and Conditions of Purchase for the Supply of Goods and Services (Edition 02/2013)**

### **1. INTRODUCTORY PROVISIONS**

#### **1.1 Basis of contract and definitions**

The General Terms and Conditions of Purchase shall apply to all purchase orders placed. Any differing or supplemental terms and conditions of Contractor shall only apply if and to extent **gat** Gesellschaft für Automatisierungstechnik mbH (hereinafter Customer) acknowledges them in writing. All supplies to be delivered and / or services to be performed as per the purchase order are hereinafter collectively referred to as "work(s)" and delivery and performance as "performance(s)". The terms drawings, documents and the like include but are not limited to electronic versions. The word "damage" includes loss and damage.

#### **1.2 Conclusion of contract**

Purchase orders and agreements, as well as modifications and amendments thereto, shall only be binding if they are made or confirmed by Customer in writing. On conclusion of the contract, Customer saves / processes the data required for contract execution in accordance with the terms of the Bundesdatenschutzgesetz (German Data Protection Act).

#### **1.3 Treatment of supplied drawings, tools**

All drawings and other written documents and tools made available for execution of the contract shall remain the property of Customer and shall upon completion of the contract be returned by Contractor at no charge. The aforementioned documents and other items, as well as drawings and documents prepared by Contractor based on information provided by Customer, shall neither be used for other purposes, nor be duplicated, nor made accessible to third parties without the prior consent of Customer. Contractor shall be liable to Customer for all damages arising out of a breach of this obligation.

Customer's approval of drawings, calculations and other technical documents shall not release Contractor from its warranty and guarantee obligations. This shall also apply to any proposals and recommendations given by Customer which are implemented by Contractor.

Customer shall be entitled to make free and unrestricted use of any documents and information, which have been issued by Contractor, for purpose of processing or sale of the works and make them accessible to third parties including end-user.

### **2. TRANSPORTATION GUIDELINES**

#### **2.1 Shipment of hazardous goods**

Customer presupposes that Contractor, as distributor of the works, is fully aware of any hazards associated with dispatch, packaging, storage etc. of its works. Therefore Contractor shall before conclusion of contract check whether the works specified in the purchase order are classified as hazardous goods (e.g. paints, adhesives, chemicals or flammable, oxidizing, explosive, combustible, toxic, radioactive, corrosive goods, or goods susceptible to spontaneous heating). In such cases, Contractor shall immediately inform Customer in detail. However, Contractor shall at latest when returning the "order confirmation", send to Customer the relevant product information (at least safety data sheets and accident prevention leaflets), as well as details of the type and quantity of delivery lots to be supplied.

Declaration, labelling and packing shall be executed by Contractor observing the most recent versions of applicable national and international regulations (e.g. ADR, R&D, IMDG-Code, IATA-DGL, ADN), and shall be accompanied by legally signed statutory declarations of hazardous materials. Packaging and labelling shall comply with applicable laws and regulations.

#### **2.2 Additional expenses or damages due to incomplete or incorrect information**

Contractor is obliged to send each consignment clearly and visibly furnished with necessary shipping documents, bill of deliveries, letter of consignment, labelling and identification marks. Each consignment shall bear reference to purchase order number, material number and place of delivery. This shall also apply to consignments, which are directly sent to third parties, not via Customer's premises.

Any increased expenses incurred by Customer as a result of late, incorrect or incomplete submission of the requisite documents shall be borne by and will be invoiced to Contractor as a flat administrative charge of EUR 75,-. Customer reserves the right to claim any additional damages.

Furthermore Contractor shall be liable for all damages arising as a result of incorrect information or of failure to comply with applicable regulations for handling of hazardous goods (packaging, shipping, storage etc.).

### **2.3 Export licenses**

- a. Proof of Origin: Contractors located in the European Union shall provide a "long-term supplier's declaration" or – unless otherwise possible – a separate declaration for each consignment of goods, latest at the time of delivery, according to the rules as set forth in the Council Regulation of the European Union No. 1207/2001. Contractors located outside the European Union shall provide upon request proof of preferential origin (EUR.1, EUR-MED, declaration on the invoice, etc.) according to the respective provisions governing preferential trade with the European Union. If the goods do not have preferential origin status or if the preferential origin deviates from the non-preferential origin, Contractor shall inform about the non-preferential origin and – upon request – provide a respective certificate of origin issued by the responsible authority. The country of origin shall be stated precisely. In case a community or group of countries is concerned, the individual country must be mentioned additionally, e.g. "Federal Republic of Germany (European Union)" Any proof of origin as referred to in this paragraph shall be free of charge.
- b. Contractor undertakes to provide for each supplied item the net weight and the customs tariff number according to the European Combined Nomenclature or the HS-Code according to the "Harmonized System".
- c. Contractor is obliged to inform Customer in writing, if the supplied goods are subject to export restrictions, in particular if the scope of supply contains Dual-Use or other items according to European Regulation (EC) No 428/2009 or any other regulation prohibiting or restricting the export or re-export of certain goods in general or to specific countries, such as but not limited to European embargo regulations, the U.S. Export Administration Regulations ("EAR") or the International Traffic in Arms Regulations (ITAR).
- d. Contractor has to take care that the business premises and the loading and shipping areas where products for the Customer are produced, stored, prepared, loaded and transported, are protected against unauthorized interference within a safe and secure supply chain, and that all employed staff is reliable.

### **3. SCHEDULES**

#### **3.1 Dates for performance**

Should Contractor become aware that it cannot meet the agreed dates, it shall immediately notify Customer of this in writing. Early performance and partial performance shall require the consent of Customer.

#### **3.2 Liability for delay**

If Contractor fails to meet the agreed dates or deadlines, then the legal consequences as per applicable laws, in particular liability for damages in the event of delay, shall apply.

#### **3.3 Further rights and claims in the event of delay**

Moreover, and without prejudice to Customer's other rights, Customer may, upon expiry of a reasonable extension of time set by Customer, or if due to delay the works are no longer of any value to Customer arrange for a third party to perform the works not yet performed by the Contractor.

Should documents or items in Contractor's possession be required for this purpose, Contractor shall immediately hand over these to Customer. If intellectual property rights restrict a third party in supplying or performing the works, Contractor shall be obliged to immediately seek a remedy from this restriction.

### **4. PENALTY IN THE EVENT OF DELAY**

If a penalty has been agreed upon for delays, Contractor shall be obliged to pay the agreed penalty commencing with the first day of such delay. Customer shall not be obliged to expressly reserve the right to demand such penalty at the time of acceptance, but shall be entitled to offset the amount against the final invoice amount. Customer may still claim the penalty even if Customer cancels the contract or arranges for a third party to undertake the delivery / performance after the claim arises. The foregoing is without prejudice to Customer's other rights and claims due to delay.



## 5. REMUNERATION, EXCESS DELIVERY OR SHORT DELIVERY

### 5.1 Prices

The agreed prices are fixed and firm prices.

### 5.2 Pricing

Prices shall be free place of use, including packaging and freight costs. The manner of pricing shall not affect the agreed place of performance.

### 5.3 Insurance

Customer reserves only to accept insurance costs incurred by Contractor in case of prior written agreement.

### 5.4 Excess delivery and short delivery

Excess delivery or short delivery is only permissible in case of prior written consent of Customer.

## 6. PAYMENT

### 6.1 Payment terms

Payments for deliveries of goods will at Customer's choice be effected within 14 days with a discount of 3%; payment for services will be effected net within 45 days. Any different payment terms specified in individual purchase orders shall take precedence over the foregoing. The aforementioned term of payment shall commence upon receipt of the invoice or if goods have been delivered / services rendered without defects and in full, or where documents and certificates form part of the scope of performance, when these have been handed over to Customer in accordance with the terms of the contract, whatever occurs later. If a payment cannot be made on time due to the fact that the delivery documentation is not in order or the invoice details are incomplete, the payment and discount periods shall not commence until such matters have been clarified.

### 6.2 Advance payments

Customer effects agreed advance payments (mostly in connection with warranties) against invoice, in accordance with the provisions of the VAT legislation. Even if advance payments are made, Contractor shall list and account for all deliveries / performances in a final invoice.

### 6.3 Payment subject to reservation

Payment of invoices does not imply acceptance of any claims of Contractor which have not yet been examined and explicitly accepted by Customer.

## 7. ASSIGNMENT OF RIGHTS AND CLAIMS

Contractor's rights and claims against Customer may only be assigned to third parties, or be permitted to be collected by third parties, subject to the prior written consent of Customer. Such consent shall not unreasonably be withheld.

## 8. RESERVATION OF TITLE

Customer hereby rejects all forms of reservation of title that extend beyond a simple reservation of title. These shall be subject to prior written agreement on a case by case basis. If sub-suppliers nevertheless assert proprietary rights, co-ownership rights or rights of lien, or arrange for enforcement vis-à-vis Customer, then Customer may claim from Contractor compensation of all damages resulting there from.

## 9. WARRANTY RIGHTS

### 9.1 Scope of warranty rights

Contractor shall provide works without defects. They shall in particular have the agreed qualities / characteristics and values guaranteed by Contractor, and shall conform to the latest state of the art as well as to the relevant regulations as issued by authorities and professional associations, and might not have any defects.

### 9.2 Individual warranty claims

Customer shall have the right to claim remedy either via repair or replacement delivery and to claim damages, all in accordance with the statutory provisions. Furthermore, Contractor shall bear all costs and expenses incurred as a result of remedy, including costs of assembly and disassembly. If remedy does not take place within the reasonable period set by Customer, if Contractor fails to remedy or setting of a reasonable period for remedy was legally superfluous, Customer may furthermore cancel the contract or reduce Contractor's remuneration. In addition, as per applicable law Customer may claim damages, even in lieu of performance, and also reimbursement of wasted costs and expenses. If Customer is entitled to guarantee claims in excess of warranty claims, these shall not be affected by this clause.

### 9.3 Self-remedy

In urgent situations, in particular where there is a risk of serious damage, Customer may execute remedy itself, at Contractor's cost and risk, if (I) Customer has notified Contractor in advance, (II) if Contractor has failed to comply within a reasonable period with Customer's request for remedy, or (III) if Customer was not able to request remedy from Contractor due to urgency. Notwithstanding the above, Contractor's obligation to remedy shall remain unaffected. Contractor shall bear all additional costs accruing, for example the costs of assembly, disassembly, test and technical acceptance. This provision shall not affect the right of self-remedy as per applicable law.

### 9.4 Notice of defects

Customer shall be entitled to serve notices of defects within two weeks of receipt of the goods, and in the case of hidden defects, within two weeks of their discovery.

### 9.5 Period of limitation for warranty claims

The period of limitation for warranty claims shall be 36 months, unless applicable law provides for a longer period of limitation. The period of limitation shall commence upon delivery or performance, or – if acceptance is agreed or is prescribed by law –, at the time of acceptance. In relation to remedial action by contractor remedy, the period of limitation shall recommence when the remedial action has occurred.

### 9.6 Periods of limitation in the event of business interruption

If in case of business interruption due to defect parts of the machinery cannot be used as envisaged by the contract, then the period of limitation for the defective parts shall be extended by the duration of the business interruption.

## 10. LIABILITY

### 10.1 General liability

Contractor's liability shall be governed by applicable law.

### 10.2 Product liability

Contractor shall hold Customer harmless and indemnify Customer from all claims arising out of non-contractual product liability due to a defect in the product / part supplied by Contractor. Accordingly, Contractor shall also be liable for damages that are incurred by Customer as a result of Customer's precautionary measures of a reasonable nature and extent in order to avert a non-contractual product liability claim, e.g. via public warnings. This shall not affect Customer's right to claim its own damages against Contractor.

### 10.3 Liability for environmental damage

Contractor shall be liable for all damage caused to Customer or to third parties because Contractor or its vicarious agents have breached the provisions of the Immissionsschutzgesetz (German Emission Protection Act) or of the ordinances issued in accordance therewith or other environment protection laws or regulations. It shall hold Customer harmless and indemnify from all claims that are made against Customer by third parties in the event of such a breach.

### 10.4 Obligation to insure

Contractor undertakes to insure itself adequately against all risks that entail its liability. It shall provide evidence of its insurance cover at Customer's request.

## 11. FINANCIAL DETERIORATION, INSOLVENCY, OTHER IMPORTANT REASONS

In addition to any other rights and claims Customer may have, Customer may fully or partially cancel the contract in the event of

- serious financial deterioration of Contractor
- and /or cessation of Contractor's payment
- and / or default in contract execution, following Contractor's application for the institution of insolvency proceedings
- and / or default in contract execution after the institution of insolvency proceedings regarding Contractor's assets, or failure to institute insolvency proceedings due to insufficient funding
- and / or due to other important reasons.

In such circumstances, Customer shall have the right to demand from Contractor restitution of all items and documents owned by Customer. Furthermore, Customer shall against pro rata payment have the right to request from Contractor restitution of all or part of the works, whether or not they have been completed, with respect to which cancellation of the contract has not been declared; Contractor shall be obliged to immediately hand over these to Customer and to transfer ownership to



Customer. In such circumstances, Contractor shall not have any right to claim damages or any further remuneration.

## **12 INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES**

### **12.1 Guaranteed use as per the contract**

Contractor shall ensure that Customer does not infringe copyrights, patents or other intellectual property rights of third parties when using Contractor's works in accordance with the terms of the contract.

### **12.2 Indemnification against claims of third parties due to infringement of domestic intellectual property rights**

Contractor shall hold Customer harmless and indemnify Customer against claims of third parties due to infringement of a domestic intellectual property right. With regard to claims for damages this shall only apply in case of negligence or wilful misconduct of Contractor.

### **12.3 Indemnification against claims of third parties due to infringement of foreign intellectual property rights**

Contractor shall hold Customer harmless and indemnify Customer against claims of third parties due to infringement of a foreign intellectual property right, if Contractor was aware of the use in the country of destination. With regard to claims for damages this shall only apply in case of negligence or wilful misconduct of Contractor.

### **12.4 Measures to avert or remedy infringements of intellectual property rights**

Contractor shall bear license fees, expenses or costs which Customer has incurred in accordance with item 12 in order to avoid or remedy infringements of intellectual property rights, where these are the result of Contractor's not ensuring Customer's rights required for the use as per the contract. However, in case of a claim, Customer shall not conclude any agreements with the proprietor of the intellectual property rights at Contractor's expense without involving Contractor.

## **13. SUBCONTRACTS**

Contractor may only subcontract the execution of a purchase order or significant parts thereof to third parties with Customer's prior written consent which shall not unreasonably be withheld.

## **14. ACCESS TO PRODUCTION FACILITIES**

In case of purchase orders which are individually executed based on Customer's specifications and subject to prior arrangement of dates with Contractor, Customer shall have the right to enter Contractor's production facilities and Contractor shall assign a contact person to assist with specific inquiries related to execution. Contractor is obliged to obtain consent from its own suppliers to ensure that Customer may also exercise this right at their premises.

## **15. SEVERABILITY**

In the event that individual provisions should be invalid, this shall not affect the validity of the remaining provisions. The corresponding provision of applicable law will replace any invalid contract provision.

## **16. PLACE OF PERFORMANCE**

Place of performance for works shall be the place of use specified in the purchase order and for payment Customer's premises at Geesthacht (Germany).

## **17. PLACE OF JURISDICTION / APPLICABLE LAW**

**The ordinary court having jurisdiction at Customer's premises at Geesthacht (Germany) shall have jurisdiction in any disputes. However, Customer may also elect to sue Contractor at Contractor's general place of jurisdiction. The laws of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.**

### **Supplementary Terms and Conditions of Purchase for Purchase Orders regarding plants and machineries, installation, commissioning and similar services 02/2013**

**The following terms and conditions of purchase for Purchase Orders regarding plants and machineries shall apply in addition to the above General Terms and Conditions of Purchase. In the event of contradictions with the General Terms and Conditions of Purchase, the following provisions shall have precedence over the General Terms and Conditions of Purchase.**

## **18. SCOPE OF CONTRACTOR'S WORKS**

### **18.1 Scope and execution of supply of plants and machineries**

Contractor shall supply the plant or machinery along with all parts that are necessary for faultless operation, subject to compliance with all quality features and other features and values Contractor has guaranteed, including the related documentation. Machine units and parts shall be configured in such a way that they can be successfully and quickly serviced, inspected and replaced. Acceptance of Customer's requests shall not relieve Contractor of this responsibility.

### **18.2 Scope of installation, commissioning and similar services**

Services to be provided by Contractor, including the associated documentation shall be executed completely and in accordance with the terms of the contract. Contractor shall execute such services under Contractor's responsibility, even if it implements Customer's requests. Contractor shall inform itself about conditions at the place of erection / installation before executing the services. Contractor shall in particular familiarise itself with the weather and environmental conditions. Contractor shall consider these during contract execution, in order to permit timely execution. During execution of the services Contractor shall act with special diligence with respect to environmentally hazardous materials. If Contractor finds pollutants, either in the ground, in enclosed walls or containers, or if these are suspected to be present, on the basis of the local circumstances or for another reason, Contractor shall immediately notify Customer in writing and give Customer the opportunity to investigate and to instigate appropriate measures.

## **19. WORK AT WORK SITE AND AT CUSTOMER'S CONSTRUCTION AND INSTALLATION SITES**

### **19.1 Preparatory work**

Before commencing installation or assembly work, Contractor shall examine the foundations, tie-ins, pegging out and other relevant conditions in the immediate vicinity, so as to ensure that its work is free of defects.

### **19.2 Responsibility, replacement of staff**

The presence of Customer's installation management on the installation site shall not relieve Contractor of its responsibility for the work it is to undertake. Contractor shall appoint an installation manager at site with specialist knowledge and experience and shall furnish him with the requisite authorities. Customer shall be informed immediately before any staff is replaced. Customer shall have the right to demand the replacement of staff who proves not to have specialist knowledge or who proves to be a hazard to the safety of the operation.

### **19.3 Verbal agreements**

Direct verbal and written agreements between Contractor, end-user and third parties, in relation to matters affecting contract execution, shall not be valid without Customer's consent.

### **19.4 Coordination of the work**

Contractor shall be obliged to coordinate the execution of its work with that of other contractors at the place of performance, if necessitated by the overall execution of the construction or required by Customer. Care shall be taken to ensure that reciprocal interests are safeguarded. Customer shall have the right to request that it or third parties have joint use of the Contractor's scaffolding, equipment etc. against adequate remuneration.

### **19.5 Safety measures**

The execution of work at Customer's work premises / job site shall be coordinated in good time with Customer's responsible technical clerk. In addition, Contractor shall inform itself at Customer's work safety expert with regard to any local hazards, and shall coordinate the requisite safety measures with this expert.

Contractor shall ensure that its employees and those of its subcontractors behave in a safety-conscious manner and wear the prescribed protective safety gear. Contractor shall appoint a person responsible for safety measures during the installation work.

### **19.6 Fire protection**

Contractor shall be obliged to observe all fire protection provisions applicable at the place of performance. Contractor shall report to the work premises / job site fire service and coordinate the requisite fire protection measures. If fire-hazardous work cannot be avoided on or near plant susceptible to fire and / or explosion, such as oil tanks, cables etc., this work shall only be carried out with the prior approval of the work premises / job site fire services.



#### **19.7 Contractor's personnel**

Contractor shall submit to Customer a list containing the names of all persons he intends to employ on the work premises / job site. The list shall permanently be kept up-to-date. Contractor shall upon request provide evidence to Customer that these persons benefit from social security coverage as per applicable laws. Contractor shall observe and adhere to all statutory regulations that apply at the place of performance at the time of execution of its work, in particular in the event of the employment of foreign workers. Contractor shall accordingly instruct its personnel. Contractor shall hold Customer harmless and indemnify Customer from any consequences of the failure to observe such regulations, in particular any claims. Contractor may only employ subcontractors for work on the work premises / job site with Customer's prior written consent which shall not unreasonably be withheld. In cases of risk to operational safety, or due to other important reasons, Customer shall have the right to refuse Contractor or its subcontractor access to the work premises / job site.

#### **19.8 Conduct at the job site, items brought to site**

Contractor shall ensure that its staff and those of its subcontractors comply with Customer's directions in relation to the maintenance of order and safety, and shall submit them to the usual checks at job site.

All items brought to Customer's work premises / job site shall be subject to Customer's control. Contractor shall clearly mark items that it wishes to bring to the work premises / job site with its name or company logo beforehand. Prior to bringing items onto or removing items from work premises / job site, Contractor shall provide Customer's supervisor with a list of such items, for countersignature and deposition.

Customer shall not be liable for theft or damage to items brought to the work premises / job site. Contractor shall refrain from erecting job site signboards unless Customer explicitly requests them.

### **20. PERFORMANCE OF THE SUPPLY / SERVICE**

#### **20.1 Acceptance**

If acceptance is statutorily provided for or agreed, then – unless different conditions of acceptance are specified the acceptance date shall be jointly specified following written application by Contractor. The result of the acceptance shall be summarised in an acceptance protocol. Risk shall not transfer until Customer has confirmed successful acceptance. Acceptance may not take place in any other way, specifically not through tests, interim tests, the issue of certificates or evidence of work. Furthermore use which is carried out for execution of acceptance tests or necessary for execution of work shall not constitute acceptance. Notwithstanding any other rights or remedies if Customer or the acceptance authority has already ascertained serious defects prior to acceptance, which have not been remedied, then Customer may postpone an acceptance date already determined until the defects have been remedied. Commissioning of the completed work or part thereof by Customer or its customers shall not constitute acceptance.

#### **20.2 Costs of acceptance**

Contractor shall bear the costs of acceptance regarding material. Customer and Contractor shall each bear the costs of acceptance on their own personnel.