

# General Terms and Conditions of Purchase



## **Section I. Ordering and Order Confirmation**

1. GRAW may cancel the order if the Contractor has not accepted the order in writing within one week after receipt (order confirmation).

2. Any and all deviations, alterations or amendments of the order owing to the order confirmation shall become an integral part of the contract only if they are confirmed by GRAW in writing. In particular, GRAW shall be bound to the Contractor's General Terms and Conditions only insofar as that they correspond to these Terms and Conditions or it has consented to them in writing. The acceptance of delivery or services as well as payments shall not imply such consent.

3. Provisions in other documents (e. g. specifications, data sheets, technical documentation, advertising material, order confirmation or delivery notes) which deviate from these Terms and Conditions (e. g. regarding legal conditions, liability, usage restrictions) shall not apply.

4. The preparation of offers for GRAW shall be carried out free of charge.

5. GRAW reserves the right to stipulate material, construction and design changes. Any and all additional costs incurred by design changes must be communicated to GRAW immediately and require confirmation in writing. Any other subsequent costs increases shall be excluded unless agreed otherwise.

## **Section II. Usage Rights**

1. The Contractor hereby grants GRAW the following non-exclusive, transferable, global and perpetual right

- a) to use the deliveries and services, including the related documents, to integrate them into other products and to sell them;
- b) to install, use, test and run the software and the related documentation (together hereinafter referred to as „software“);
- c) to sub-licence the usage right to affiliated companies within the meaning of Section 15 of the German Companies Act to authorised third parties, distributors and end users;

2. All sub-licences granted by GRAW must provide for appropriate protection for the Contractor's intellectual property rights to the software by using the same contractual provisions which GRAW uses to protect its own intellectual property rights.

3. The Contractor shall inform GRAW in due time, at the latest upon order confirmation, whether its deliveries contain open source components. This refers to software, hardware or other information which is entrusted to random users without any

licence fee with the right to process or disseminate them based on a corresponding licence (e. g. GPL, LGPL or MIT licence). If the deliveries contain open source components, the Contractor shall fulfil the obligations of all applicable open source licences as well as grant all rights and pass on information to GRAW which it requires to fulfil these licence obligations.

## **Section III. Performance Period, Contractual Penalty for Default**

1. The punctuality of deliveries shall be determined by their receipt at the place of destination/delivery named by GRAW, in accordance with Incoterms<sup>®</sup> 2010; the punctuality of deliveries with installation or assembly as well as of services shall be determined by their acceptance by GRAW.

2. In the event of an apparent delay in delivery or performance or supplementary performance, GRAW must be informed and its decision be sought immediately.

3. If the Contractor defaults on delivery or performance, GRAW shall be entitled to charge a contractual penalty amounting to 0.3 % (zero point three percent), however not more than 5 % (five percent) of the total contract sum, for each commenced working day of delay. If the corresponding reservation is not made upon acceptance of the deliveries, services or supplementary performance, the contractual penalty may still be claimed if the reservation is declared before the final payment is made.

4. Any and all further or other legal claims shall remain unaffected.

## **Section IV. Passing of Risk, Shipment, Place of Performance, Transfer of Ownership**

1. For deliveries with installation or assembly and for services, the risk shall pass upon acceptance, for deliveries without installation or assembly upon acceptance by GRAW at the named place of destination/delivery in accordance with Incoterms<sup>®</sup> 2010. Unless otherwise agreed, DDP (named place of destination) as per Incoterms<sup>®</sup> 2010 shall apply if (a) the Contractor's domicile and the place of destination are located in the same country or if (b) the Contractor's domicile and the place of destination are both located in the European Union. If the above-named requirements are not met, DAP (named place of destination) as per Incoterms<sup>®</sup> 2010 shall apply unless otherwise agreed.

2. Unless otherwise agreed, the costs of fit-for-purpose packaging shall be covered by the agreed payment. If the transport costs are borne by GRAW, readiness for shipment with the specifications according to Section IV No. 3 must be notified imme-

diately. The Contractor shall ship the deliveries at the lowest costs respectively unless GRAW has stipulated a specific mode of transport or the conclusion of a transport contract has been stipulated by GRAW. Any and all additional costs due to non-compliance with shipping instructions shall be borne by the Contractor. If DAP/DDP (name place of destination) as per Incoterms® 2010 is agreed, GRAW may also specify the mode of transport. Any and all additional costs for possibly necessary accelerated transport in order to meet a delivery deadline shall be borne by the Contractor.

3. Every delivery must include packing lists or delivery notes specifying the contents as well as the complete purchase order number.

4. Insofar as the parties agree that the Contractor shall commission the transport of deliveries which contain dangerous goods for the account of GRAW, the Contractor shall be obligated to submit the dangerous goods data required according to statutory regulations to the forwarder designated by GRAW upon placement of the transport order. In these cases, the Contractor shall also be responsible for lawful packaging, marking, labelling, etc., of the employed mode(s) of transport.

5. If GRAW informs the Contractor that further transport with another mode of transport after a delivery is planned, the Contractor shall also consider the necessary dangerous goods regulations with regard to this further transport.

6. Ownership shall transfer to GRAW upon delivery or acceptance.

7. The Contractor is – if required by GRAW – obligated to take back the packaging material of the delivery item. If the Contractor does not comply with this request, GRAW shall be entitled to arrange the disposal of the packaging material at its expense.

8. The Contractor is obligated to inform GRAW in writing immediately if circumstances occur or become apparent as a result of which the contractual delivery deadline cannot be met. The reasons and the probable duration of the delay must be communicated to GRAW.

#### **Section V. Payments, Invoices**

1. Unless otherwise agreed, payments shall be due within 30 (thirty) days net. In the event of payment within 14 (fourteen) days, GRAW shall be entitled to a deduction of 2 % (two percent) discount. The payment period shall begin when the delivery or service has been completely rendered and the properly issued invoice has been received.

2. The purchase order numbers as well as the numbers of every single item must be specified in invoices. If this information is missing, the invoices are not payable. Invoice copies must be marked as duplicates.

3. Insofar as the Contractor is obligated to provide material tests, test reports, quality documents or other documents, the com-

pleteness of the delivery and service shall also presuppose the receipt of these documents. Discount deduction shall also be permitted if GRAW offsets or withholds payments in appropriate amounts due to defects.

4. Payments shall not imply acknowledgement of deliveries or services as being contractual.

#### **Section VI. Receiving Inspections**

1. Immediately after receipt of deliveries at the named place of destination, GRAW shall check whether they correspond to the ordered quantity and the ordered type, and whether any externally visible transport damage or any externally detectable defects exist.

2. If GRAW finds a defect during the above-named inspections or later, it shall notify the Contractor of this.

3. Notices of defects may be asserted within one month of delivery or service or, if the defects were noticed only after their processing or use, after they were found.

4. GRAW shall have no other duties towards the Contractor than the duties of inspection and notification named above.

#### **Section VII. Liability for Defects**

1. If defects are found before or during passing of risk or occur during the limitation period named in Section VII No. 8 and Section VII No. 9, the Contractor shall either eliminate the defect at its expense or redeliver the item or re-perform the service without any defects at GRAW's option. This shall also apply to deliveries for which inspection has been limited to spot tests. GRAW's choice shall be made using equitable discretion.

2. If the Contractor does not carry out supplementary performance within an adequate period to be set by GRAW, GRAW shall be entitled to

- withdraw from the contract in whole or part without compensation or
- demanding reduction of the price or
- carry out rectification or redelivery itself or have it carried out at the Contractor's expense and
- claim damages instead of performance of the service.

The timeliness of supplementary performance depends on its receipt at the place of destination.

3. The rights named in Section VII No. 2 may be exercised without a setting a deadline, if GRAW has a special interest in supplementary performance due to avoidance of its own default or another urgency, and requesting the Contractor to remedy the defect within an adequate period is deemed unreasonable for GRAW. The statutory regulations regarding the dispensability of setting a deadline shall remain unaffected.

4. The aforementioned claims shall lapse after twelve months from notification of the defect, however not before the expiry of the limitation period named in Section VII No. 7.

5. Any and all further or other legal claims shall remain unaffected. Insofar as the Contractor carries out re-delivery or rectification within its obligation to remedy defects, the periods named in Section VII No. 8 and Section VII No. 9 shall begin to run again.

6. Regardless of the passing of risk of delivery, the Contractor shall bear the costs and risk of the measures required for the purpose of supplementary performance (e. g. return costs, transport costs, assembly and disassembly costs).

7. The limitation period for material defect claims is three years unless the law prescribes longer periods.

8. The limitation period for claims for defects of title is five years unless the law prescribes longer periods.

9. The limitation period shall begin for deliveries without installation and assembly upon receipt at the place of destination named by GRAW, for deliveries with installation or assembly as well as services upon their acceptance. In the event of deliveries to places where GRAW executes orders outside of its plants, said limitation period shall begin upon acceptance by GRAW's customer, at the latest one year after passing of risk.

#### **Section VIII. Contractor's Duty to Inspect and Notify**

1. The Contractor is obligated to subject components (e.g. raw materials, building materials) provided by GRAW or by its suppliers, manufacturers and other third parties to a proper receiving inspection to check for open or hidden defects and to notify its suppliers or GRAW, if said components were provided by GRAW, of the defects immediately.

2. The delivery of products free from defects of title is considered essential to the contract for GRAW. The Contractor shall therefore check the delivery and service for freedom from defects of title and notify GRAW of possibly opposing industrial rights. Infringement of these duties is subject to a regular statutory limitation period.

#### **Section IX. Subcontracting to Third Parties**

Subcontracting to third parties is not permitted without the written consent of GRAW and shall entitle GRAW to withdraw from the contract in whole or in part as well as to claim damages.

#### **Section X. Material Provisions**

1. Material provisions shall remain the property of GRAW and must be stored separately, labelled and managed as property of GRAW free of charge. Their use is permitted only for GRAW orders. In the event of culpable depreciation or loss, the Contractor shall offer compensation, with the Contractor being responsible for ordinary negligence. The same shall also apply to the invoiced provision of allocated material.

2. Processing or alteration of the material shall be carried out for GRAW, which shall immediately become the owner of the new or altered item. Should this not be possible for legal reasons, GRAW and the Contractor shall agree that GRAW shall become owner

of the new item at each point in time of processing or alteration. The Contractor shall store the new item free of charge for GRAW with the care of a prudent businessman.

#### **Section XI. Tools, Moulds, Samples, Secrecy**

1. Tools, moulds, samples, models, profiles, drawings, standard specification sheets, templates and gauges provided by GRAW as well as objects manufactured accordingly may not be passed on to third parties or used for any other purpose than the contractual purpose without the written consent of GRAW. They must be secured against unauthorised inspection or use. Reserving further rights, GRAW may demand their return if the Contractor fails to comply with these duties.

2. The Contractor shall keep knowledge and experience, documents, tasks, business transactions or other information obtained from and about GRAW as well as the conclusion of the contract and the results confidential towards third parties even after the contract has elapsed, unless this information has lawfully become publicly known or GRAW has consented in writing to its disclosure in individual cases. The Contractor shall use this information solely for the purposes required to render the services. Insofar as GRAW has consented to disclosure of orders to third parties, said parties must be obligated accordingly in writing.

#### **Section XII. Assignment of Receivables**

The assignment of receivables is only permitted with the prior written consent of GRAW.

#### **Section XIII. Special Rights of Withdrawal and Termination**

1. Beyond the legal rights of withdrawal, GRAW is entitled to withdraw from the contract in whole or in part or to terminate it if

- a) the Contractor is behind schedule with a delivery or service and, despite a reminder from GRAW, said delay lasts longer than two weeks after receipt of the reminder or if
- b) it can no longer be expected of GRAW to hold on to the contract for another reason in the person of the Contractor with due regard for the circumstances of the individual case and the mutual interests, particularly if a significant deterioration of the Contractor's financial circumstances occurs or is impending and therefore the fulfilment of a delivery and performance obligation towards GRAW is at risk.

2. GRAW shall also be entitled to terminate the contract if insolvency proceedings or comparable proceedings against the Contractor's assets have been sought or opened.

3. In the event of termination by GRAW, GRAW may use the existing equipment for the continuation of work or the Contractor's previously rendered deliveries and services for an adequate fee.

#### **Section XIV. Code of Conduct for Contractors, Safety in the Supply Chain**

1. The Contractor is obligated to comply with the laws of the respectively applicable legal system(s). In particular it shall not participate actively or passively, directly or indirectly in any form of bribery, infringement of its employees' fundamental rights or

child labour. In other respects, it shall assume responsibility for its employees' health and safety at the workplace and comply with environmental protection laws. Furthermore, it shall take appropriate measures to prevent the use of so-called conflict minerals and to ensure the transparency of the origin of the corresponding raw materials, and optimally promote and demand compliance with this Code of Conduct at its suppliers.

2. The Contractor shall implement the necessary organisational instructions and measures particularly in the areas of property protection, business partners, staff and information security, packaging and transport in order to ensure safety in the supply chain according to the requirements of corresponding internationally acknowledged initiatives based on the WCO SAFE Framework of Standards (e. g. AEO, C-TPAT). It shall protect its deliveries and services to GRAW or to third parties named by GRAW against unauthorised access and manipulations. It shall deploy only reliable staff for such deliveries and services and oblige possible subcontractors to implement corresponding measures as well.

3. If the Contractor culpably fails to comply with the duties in Section XIV, GRAW shall be entitled, regardless of further claims, to withdraw from the contract or to terminate the contract. If elimination of the breach of duty is possible, this right may not be exercised until an adequate period for eliminating the breach of duty has lapsed fruitlessly.

4. In other respects, the GRAW Code of Conduct shall apply.

#### **Section XV. Product Conformity, Product-related Environmental Protection, Dangerous Goods, Occupational Safety**

1. If the Contractor delivers products which are subject to statutory and other legal requirements with regard to their placement on the market and their further marketing in the European Economic Area or corresponding requirements in other countries of use specified by GRAW, it shall ensure that the products meet these requirements at the time of the passing of risk (see Section IV No. 1). Furthermore, the Contractor shall ensure that all documents and information which are required for proving the conformity of the products with the applicable requirements are made available immediately to GRAW upon request.

2. If the delivery contains goods which are classifiable as dangerous goods according to international regulations, the Contractor shall inform GRAW of this in a form agreed between the Contractor and GRAW at the latest upon order confirmation. The requirements regarding hazardous goods in Section IV No. 4 and Section IV No. 5 shall remain unaffected hereby.

3. The Contractor is obligated to comply with all statutory and contractual accident prevention and occupational work safety regulations. It shall ensure that endangerment of the health and safety of the staff employed by itself and its direct and indirect subcontractors to render the services is excluded.

#### **Section XVI. Regulations for Export Control and Foreign Trade Data**

The Contractor is obligated to meet all requirements of applicable national and international customs and foreign trade law („foreign trade law“). At the latest two weeks after ordering and immediately in the event of changes, the Contractor shall communicate in writing to GRAW all information and data which GRAW requires in order to comply with foreign trade law regarding export, import and re-export, in particular:

- all applicable export list numbers including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
- the statistical goods numbers according to the current commodity classification system for foreign trade statistics and the HS (Harmonised System) Code and
- country of origin (non-preferential origin) and, if required by GRAW, supplier declarations of the preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers).

#### **Section XVII. Proviso Clause**

The fulfilment of this contract by GRAW is subject to the proviso that the fulfilment is not opposed by any obstacles due to national or international regulations of foreign trade law as well as any embargoes and/or other sanctions.

#### **Section XVIII. Designation as a Reference Customer**

The Contractor shall undertake to designate GRAW as a reference customer and/or to promote products which it has developed for GRAW in the course of the contractual relationship with GRAW and/or to issue press releases or other public announcement in the course of the contractual relationship only with the prior written consent of GRAW.

#### **Section XIX. Supplementary Provisions**

1. Insofar as the order conditions do not contain any regulation, the statutory provisions shall apply.

2. If the Contractor fails to comply with its duties according to these conditions, it shall cover all costs and losses which GRAW incurs hereby unless the Contractor is not responsible for the breach of duty.

#### **Section XX. Place of Jurisdiction and Applicable Law**

1. If the Contractor is a merchant, the sole place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship shall be the domicile of GRAW. The Supplier is however also entitled to file a suit at the domicile of GRAW.

2. These General Terms and Conditions of Purchase and all other contracts which are concluded with GRAW including their interpretation are subject, unless otherwise agreed, to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).