

General Terms and Conditions of Purchase

GUGLER Water Turbines GmbH

Scope of application

The General Terms and Conditions of Purchase (GTCP) apply to all orders placed by GUGLER Water Turbines GmbH (hereafter referred to as GWT).

II. Application of the GTCP

The GTCP applies exclusively to the legal relationship established between GWT and the contractual partner. The General Terms and Conditions of the contractual partner itself therefore shall not apply if deliveries/services are accepted without objection. The following provisions apply similarly to services.

III. Conclusion of Contract

1. Orders shall only be binding if issued in writing or confirmed in writing by GWT. Any agreements, ancillary agreements and amendments to the contract made verbally or by telephone require subsequent written confirmation by GWT to have legal effect. Orders and any modifications thereto may also be placed by remote data transfer (e.g. email, fax, etc.), provided that such is desired by GWT. If within 3 (three) days, the contractual partner has not refused execution of an order, the contract shall be deemed concluded.
2. No remuneration shall be provided for visits, preparation of quotations, projects, etc.
3. We shall be entitled to modify the object of the contract after conclusion of the contract provided that it is acceptable to the contractual partner. In the event of a contract amendment, due consideration shall be made for the consequences thereof; in particular any increase or reduction in costs and delivery schedules. If, however, no amicable agreement can be reached with regard to increase or reduction in costs or delivery schedules, GWT shall be entitled to withdraw from the contract. In such case, reimbursement of any costs incurred up to the termination date shall only be possible with an itemized listing of the costs (subject to reconciliation of the signed time sheet) and handover of billed-for materials.

IV. Confidentiality

1. The contractual partner must maintain confidentiality about the contract negotiations and conclusion of the contract. The contractual partner undertakes to treat all matters not disclosed to the public that come into its knowledge during the course of the business relationship with GWT as business secrets, and to ensure that subcontractors are bound by these obligations. In the event of any breach of confidentiality, the contractual partner shall face the prospect of legal action. In such case, the agreed court of jurisdiction is Linz.
2. Any reference to the business dealings with GWT may be made only after prior written consent.
3. The provision in point 1 shall apply to both partners on a mutual basis and shall survive the end of the contract term by a period of 5 years.

V. Prices, Shipping and Packaging

1. The agreed prices are fixed prices excluding statutory value added tax. Prices include the costs of packaging, customs duties and customs formalities and the transport to the shipping address specified by GWT in the order.
2. Every delivery must contain a delivery slip providing an exact specification of the delivery according to type, quantity and weight. Delivery slips, waybills, invoices and all correspondence must include our order number and, if specified by ourselves, also the project number and description. In combined shipments, the delivery slips and invoices must specify all order numbers and project numbers issued by GWT accordingly. Failing this, GWT may request corrected supporting documents to be presented. In such case, deadlines (in particular the deadline for payment) shall by nature apply beginning only with the receipt of the corrected delivery documents and invoice(s).
3. Transfer of ownership and risks shall take place after

unloading of the goods by the contractual partner and/or by the shipping company commissioned to ship the order to the shipping address.

4. Goods must be packaged in such manner as to prevent damage during transport. At our request, the contractual partner shall take back the packaging at its own expense. Unless otherwise agreed in the order, the goods must be insured against damage in transit by the contractual partner at its own expense.

VI. Technical documentation

Detailed technical documentation that encompasses instructions for installation, operation and maintenance, wiring diagrams, cross-section drawings, spare parts lists, safety instructions, etc., must be included with the delivery. Upon concluding the contract, agreement shall be reached on the language in which the documentation shall be prepared. If this documentation is not available at the time of delivery, no approval can be issued for payment. In such case, a supplementary agreement can be made for the documentation to be supplied within an extended deadline. The contractual partner shall bear liability for the quality of the documentation.

VII. Payment

1. Invoices must be submitted separately for each delivery/service in the proper form (see also V., Z 2.), enclosing the relevant supporting documents and data. If invoices are not submitted in the proper form, receipt of the invoice shall be deferred until the invoice is presented in the correct form. Unless agreed otherwise in the order, payment shall be made within 30 days of receipt of an invoice, subject to a 3% discount; otherwise, the invoiced amount shall become due and payable 60 days after receipt of the invoice. Payment shall be deemed timely if an instruction for such payment is made within the payment deadline. The contractual partner shall bear the risk for delay in incoming payment.
2. Payment shall be made at our discretion in the applicable currency, at the head office of the contractual partner at the time of concluding the contract or in Euros.
3. Payment shall be made subject to proper fulfillment of the contract and accuracy of prices and calculations.
4. The contractual partner shall retain right of ownership until the full purchase price is paid.

VIII. Offsetting, Assignment and Retention

The contractual partner is not entitled to offset receivables against GWT. No receivables from the contractual partner may be assigned without our written consent.

IX. Deadlines, Default and Force Majeure

1. Agreed deadlines shall be binding. For compliance with delivery dates/deadlines, receipt of the goods at the goods receiving point in the agreed delivery location shall be decisive. For timely delivery of services, handover of the works shall be decisive.

For each week of delay in delivery, GWT shall charge 1% of the order value against the contractual partner. Any further compensation for reason of delay is excluded. The contractual penalty shall be limited to 10% of the order value. After that, GWT may terminate the contract unilaterally (see IX. Z3).

2. The contractual partner must take all necessary measures to comply with the delivery dates and delivery deadlines. The contractual partner must take action if it becomes aware that compliance with a delivery date/delivery deadline is at risk.

3. In the event of default, we may either demand performance and compensation for loss caused by the delay or declare withdrawal from the contract subject to the setting of a reasonable deadline for remedial action. In the case of withdrawal from the contract, claim to compensation for loss and damage caused by non-performance shall remain unaffected.

4. The contractual partner may only invoke any absence of data, documents, etc. essential for fulfillment of the contract when it provides notification of such absence in writing and the required items are not received within a reasonable timeframe.

5. In the case of force majeure and industrial disputes without culpability, the contractual parties shall be free from their obligations for performance for the duration of the disruption and to the extent of their effect.

6. In the case of early delivery, transfer of risk shall take place only on the agreed delivery date. GWT must be informed of an intended early delivery and GWT shall reserve its position on acceptance of such delivery. In case of doubt, the goods may either be returned or placed in storage, in each case at the expense of the contractual partner. In the case of early delivery, the original contractually agreed payment deadlines and conditions shall remain unaffected.

X. Guarantee, Warranty

1. The contractual partner guarantees that at the time of concluding the contract, all deliveries/performance complied with the state of the art, comply with the statutory provisions, regulations and directives of authorities, professional organizations, standards organizations and trade associations, are not encumbered by third-party rights, and that it has unrestricted right of disposal. If the contractual partner has any reservations about the design that we desire, it shall inform the latter immediately in writing.

2. In the case of purchase and work performance contracts, we shall notify the contractual partner of any evident faults or deficiencies in the delivery as soon as they are detected in the proper course of business. In any event, our notice shall be deemed immediate at all times when it takes place within two weeks from receipt of the delivery. In cases of early delivery, this deadline shall be extended by the period of the early delivery. Other faults and defects will be notified by us within two weeks of knowledge thereof.

3. If the goods do not comply with the contractual terms, we may initially demand a replacement delivery, improvements and/or rectification of omissions, or secondary price reduction, in each case as may be appropriate and as agreed with the contractual partner.

4. Should the contractual partner fail to or not fully uphold its warranty obligation, or fail to do in a timely manner, we may take the necessary measures ourselves or engage a third party to do so, in either case at the cost and risk of the contractual partner. The same shall apply in urgent cases or for minor faults and defects.

5. The warranty period shall be three years for immovable goods and two years for movable goods unless otherwise agreed in the order (in particular, it may be agreed that the warranty period shall commence with commissioning and/or acceptance by our end-client). The warranty period shall commence with the handover of goods or delivery or acceptance of performance, if such has been agreed.

6. If replacements are delivered due to complaints, delivered

goods are improved, or corrections are made for omitted items, the warranty period for these improved/replaced parts shall commence from the new date, but shall end at the latest, 6 months after the end of the original warranty period.

7. Any drawings, calculations, other technical documents, and official permits and approvals provided by ourselves shall not relieve the contractual partner from its responsibilities. Upon our request,

XI. Liability

1. The contractual partner shall accept no liability for any consequential damages (attributable to a fault or defect), including within the framework of the warranty, such as loss of earnings, downtime, etc. as well as any incidental and indirect damages. In the event of minor negligence, the total liability of the contractual partner shall be limited to the net total order value of an individual order. This limitation of liability applies to all claims from the contract, irrespective of the legal reason and title.

XII. Surety

1. In the event that any debt restructuring, insolvency or settlement proceedings are launched against the assets/business entity of the contractual partner or any interim insolvency administrator is appointed, we shall be entitled to declare withdrawal from the contract and demand compensation for loss and damages caused by non-performance.

2. We shall be entitled to refuse our performance until counter-performance is effected or assured, if such performance is endangered by poor financial circumstances on the part of the contractual partner.

3. In the cases referred to in Z1 and Z2, we may retain a commensurate surety for the duration of the relevant warranty period in each case.

XIII. Partial unenforceability

Should one or more of the provisions of the GTCP be legally unenforceable or become invalid, this shall not affect the validity of the other provisions and the contracts concluded on the basis of the GTCP. The parties undertake to pursue immediate negotiation so that the provision rendered legally unenforceable or invalid is replaced with one that in its content to the legally permissible extent approximates as closely as possible to the intended economic outcome.

XIV. Place of performance, governing law and court of jurisdiction

1. Unless otherwise agreed in writing, the place of performance shall be the delivery address specified by ourselves.

2. The contract language is German. If the contractual parties also use another language, only the wording of the German contract shall be authentic.

3. The legal relationship established between us and the contractual partner shall be governed by Austrian substantive law subject to exclusion of the UN Convention on Contracts for the International Sale of Goods.

4. For all legal disputes arising from the legal relationships established between the contractual parties on the basis of the GCTP, the parties submit to the appropriate court with exclusive jurisdiction in Linz. In the event that a judgment to be obtained in the country of domicile of the contractual partner cannot be enforced in Austria for legal reasons, the contractual partners shall submit to the arbitration ruling of the International Chamber of Commerce, which shall be entered with permanent effect by one or more arbitrators appointed under these rules, without recourse to ordinary courts of law, to the extent that no legal impediments would bar enforcement of an arbitration ruling in the country of domicile.

The arbitration tribunal shall consist of 1 or 3 arbitrator(s). The place of arbitration and venue for oral proceedings shall be Linz. The language of arbitration shall be German. Any decision according to reasonable discretion is excluded. The arbitration cause shall be governed by Austrian substantive law.