

## **English translation, German original text prevails**

### **GENERAL PURCHASE CONDITIONS**

#### **for supplies/services\***

Version of March 2015

#### **1.0 General**

Orders will only be placed by us on the basis of these General Purchase Conditions. However Special Purchase Conditions for certain supplies and/or services shall have overriding priority, inasmuch as they are referred to in the written purchase order concerned. The acceptance of our order by you shall be considered an acknowledgement of our General Purchase Conditions and a waiver of any contradictory terms of sale or delivery. This shall also apply should we not expressly contradict any terms and conditions which may differ from ours. Alternative terms and conditions shall only be binding if accepted by us in writing. In such cases, our terms and conditions shall retain supplementary validity. Inasmuch as these General Purchase Conditions or other elements of any contract require the written form, electronic transmission is sufficient, unless we have explicitly requested a qualified electronic signature under the terms of the German Digital Signature Legislation (*Signaturgesetz*).

#### **2.0 Quotations**

Quotations shall be submitted free of charge. As a general rule no remuneration shall be granted for visits, cost estimates, submission of planning documents and similar services.

#### **3.0 Purchase Orders**

- 3.1 Purchase orders and other orders, agreements as well as subsequent modifications and / or supplementary agreements are only binding if placed or confirmed by us in writing.
- 3.2 Should we place an order by telephone in advance of the written order you are obliged upon receipt of the written order to verify all details already communicated by either of us and to inform us of any discrepancies without delay.
- 3.3 The subcontracting of entire orders for goods or services is subject to our prior authorisation even if you intend to subcontract an entire order in lots.
- 3.4 All correspondence in connection with a purchase order shall be directed to the address indicated on the written purchase order and must include all details required for the processing of the order (purchase order number and date, sales order number and item number).

#### **4.0 Forwarding Instructions**

- 4.1 Unless otherwise instructed by us, despatch shall be to the address given in the purchase order or order acknowledgement. Proof of despatch shall be by means of a delivery note signed in two copies by the recipient and containing the following details:
  - purchase order number and date, commission number and item number,
  - nature, quantity, net weight and gross weight of the goods,

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\* Applicable to supplies and services to the following affiliates: Elektro Stiller GmbH, Frankenluk AG, Omexom Frankenluk GmbH, Omexom GA Nord GmbH, Omexom GA Süd GmbH, Omexom Hochspannung GmbH, GA Netztechnik GmbH, Omexom Service GmbH, Martin Bohsung GmbH, Ing 3E GmbH

- the shipping address given in the purchase order, as well as
- additional information requested in our purchase order.

One copy of the delivery note shall be enclosed with the goods, the other copy must be submitted to us by post.

- 4.2 We decline all responsibility for delays in payment due to non-compliance with these instructions. Any additional costs resulting from non-observance of the correct shipping address shall be borne by you. If by agreement we are to bear the freight charges, you are to choose the most favourably-priced means of despatch unless we have expressly required a certain means of despatch. Additional costs which accrue due to the choice of a more expensive means of despatch shall be borne by you.
- 4.3 Shipping shall be carried out at your risk. You shall bear any risk of deterioration, including the risk of accidental loss, up to the point of delivery or use indicated by us.
- 4.4 If not otherwise agreed, you are required to take back all packing material at your expense. In the case of regular deliveries, packing material can be collected during a subsequent delivery.

## **5.0 Provision of material**

- 5.1 Material provided by us may only be used for and in compliance with our order. All such material shall remain our property. It is to be stored separately and marked as our property. Wherever necessary you are obliged to clarify with third parties that such material is our property. You shall bear the risk of accidental loss with regard to any material provided by us. You are obliged to take out appropriate insurance cover.
- 5.2 Prior to delivery of goods or services you are required to check whether the material provided by us was delivered in proper form and on time. If this is not the case you are required to grant an extension and describe again the material to be provided by us. Clarification is to be provided at the same time as to the consequences arising – particularly for, but not limited to, time schedules - should the extended deadline not be met by us. Should you fail to provide such clarification or if the required deliveries and services to be provided by us are not described in an adequate manner, you shall not be entitled to a time extension. All our rights remain unaffected.
- 5.3 Should material provided by us be processed, combined or inseparably blended with material belonging to others, we shall acquire co-ownership of the new substance on a proportional basis relating the value of our material (purchase price plus Value Added Tax) to that of the processed, combined or blended items/objects at the time they are processed, combined or blended. Should the combination or blending be carried out in such a manner that the parts provided by the supplier are deemed to be the principal parts, it is agreed as well that the supplier will transfer proportional ownership to us, as far as the principal parts belong to him; the supplier holds sole ownership or co-ownership in trust for us. Should the securities belonging to us on the basis of this clause exceed by more than 10% the purchase price of all our goods subject to retention of title and therefore not yet paid, we shall be obliged on your demand to release security rights of our choice.
- 5.4 If we provide materials our liability is limited to wilful intent, gross negligence and fraudulent behaviour as well as to claims based on product liability law and to claims for damages resulting from injury to life, body or health. All further liability is excluded.

## **6.0 Remuneration**

- 6.1 Agreed prices are fixed prices.
- 6.2 Unless agreed otherwise in writing, prices are 'free delivered', including packing, duty and insurance up to the stated shipment address/place of use.
- 6.3 As soon as the delivery/service has been carried out, the invoice is to be submitted in three copies each indicating both the order and commission numbers. Value Added Tax is to be shown separately in the invoice.

## **7.0 Terms of Payment**

- 7.1 We are entitled to deduct a cash discount of 3 % from all invoice sums due to you (part payments and final payments) following the deduction of agreed retentions for security purposes, retentions for defects as well as for invoice adjustments providing we pay within a period of 15 working days from receipt of your invoice. Within this period no interest for late payment can be charged. The payment period starts on receipt of the invoice, but not before receipt of the goods or performance of the services, and - if documentation or certificates are required together with the goods/services - this period shall not start until those documents have been submitted completely and in accordance with the contract. We are nevertheless entitled to deduct discounts in the case of late payments which are due to the required documents/certificates not being in proper form or due to incomplete invoicing.
- 7.2 We reserve the right to make payments by bank transfer, in cash or by cheque.
- 7.3 The assignment of claims against us is excluded. Exceptions are only possible following agreement in each case.
- 7.4 Any prolonged or extended retention of title by you is excluded.
- 7.5 Under the provisions of the German Law of 30.8.2001 on the Containment of Illegal Activities in the Construction Industry (*Gesetz zur Eindämmung illegaler Betätigung im Baugewerbe*), Section 48 of German Income Tax Law (*Einkommenssteuergesetz*) requires us to retain withholding tax, currently at a rate of 15 %, on all payments due and to forward the retained amount to the German tax authorities on behalf of the contractor/supplier. The basis of assessment for this tax deduction is the full invoice sum including value added tax. We shall not deduct any such tax if you provide us with a valid certificate of exemption according to Section 48 b Subsection 1 Clause 1 of German Income Tax Law which releases us from the obligation to collect the withholding tax otherwise due.
- 7.6 We are "building contractors" under the terms of § 13 b of the German Sales Tax Act (*Umsatzsteuergesetz*). (This does not apply to the following companies: GA Holding GmbH, Heidelberg, GA Management GmbH, Heidelberg). Inasmuch as you carry out construction work for us, no Value Added Tax shall be shown in the corresponding invoices.

## **8.0 Offsetting and retention of claims by our group of companies**

- 8.1 You agree that we may in all cases set off our claims against your claims, no matter on which legal grounds they are based, even if the mutual claims fall due on different dates. If the claims fall due on different dates, our respective claims shall fall due on the date of maturity of our liabilities at the latest and they shall be settled taking into account the appropriate value date of the invoice. This shall also apply if one party has agreed to pay in cash and the other party is to pay by bill of exchange or by other means. If so agreed, such offsetting of claims shall only refer to the balance of accounts.
- 8.2 You agree that we may set off our uncontested or legally ascertained claims against all the claims you have on whatever legal grounds against companies belonging to our group of companies.
- 8.3 Companies belonging to our group as per 8.2 above are:  
Elektro Stiller GmbH  
Frankenluk Aktiengesellschaft  
Omexom Frankenluk GmbH  
Omexom Austria GmbH (Austria)  
Omexom GA Nord GmbH  
Omexom GA Süd GmbH  
GA Energo technik s.r.o. (Czech Republic)  
Omexom Hochspannung GmbH  
Omexom Service GmbH  
Omexom Magyarország Kft. (Hungary)  
GA Netztechnik GmbH  
Omexom Slovensko s.r.o. (Slovakia)  
Martin Bohsung GmbH  
Ing 3E GmbH
- 8.4 Your right of retention in respect of any goods, documents and data made available to you by us to assist you in the performance of your contractual obligations is excluded. The same applies for your right of retention in connection with your disputed and not yet legally ascertained counterclaims.

## **9.0 Deadlines, Delays in Delivery, Force Majeure**

- 9.1 Deadlines agreed in writing are binding. Compliance with a date of delivery or a deadline is determined by the date of receipt of the goods or the date on which the service is carried out at the delivery address or point of use indicated by us, or by successful acceptance of the goods/services on time.
- 9.2 Should you become aware that - for whatever reason - an agreed deadline cannot be met, you are required to inform us in writing without delay, indicating the reasons for and the duration of the expected delay.
- 9.3 There is no default of acceptance if the non-acceptance of the ordered goods / services is clearly the result of a military call up, war, revolt, strike, lock-out or the occurrence of some other unforeseeable hindrance (force majeure) which is beyond our sphere of influence. If for the above-mentioned reasons we are also not able to accept the goods or services following a reasonable extension of the deadline, both parties are entitled to withdraw from the contract; claims for compensation by the supplier are in this case excluded.
- 9.4 Should a delivery be carried out earlier than agreed, we reserve the right to return the goods at your expense. Alternatively, the goods shall be stored

by us at your expense and risk until the due delivery date. In the case of an early delivery we reserve the right not to make payment before the agreed delivery date.

## **10.0 Fulfilment of a contract**

- 10.1 You hereby guarantee and warrant that all articles supplied and all services rendered by you comply with the most up-to-date state of technology - inasmuch as this does not contradict generally acknowledged rules of technology - with applicable legal regulations, with specifications and directives of the authorities and with technical rules of government authorities, employers' liability insurance associations and professional associations. You guarantee the nature, quality and durability of the goods/services as described in our purchase order or the contract and its appendices. You are required to consult us should expected quality and service features not be described unequivocally in the purchase order or the contract and its appendices, or if it will not be possible to fulfil the guaranteed features required by us on the agreed dates of delivery.
- 10.2 Should you have any reservations about the requested method of carrying out our contract, you are required to inform us in writing immediately. In the case of deliveries/services carried out on the basis of drawings, the dimensions indicated on these drawings must be checked by you before starting. Errors of dimension on the drawings which lead to a need for alterations in production already in progress will not entitle you to any additional claims.
- 10.3 A visual inspection of your deliveries for obvious or easily detectable defects will be carried out by us as soon as possible during the normal processing of the relevant order and notice of the defect(s) detected will be issued. An inspection to determine full compliance with the requirements of the written purchase order can however only be carried out at a later date. We will give notice of hidden defects within two weeks of them becoming detectable.

## **11.0 Rights in the case of defects**

- 11.1 Our rights in the case of defects are based on the legal provisions in force. For contracts which include the provisions of VOB/B and VOL/B these provisions have priority in the case of defects and our rights are primarily based on them.
- 11.2 For contracts which include the provisions of VOB/B and VOL/B the period of warranty for the main deliveries and services shall also apply to the deliveries and services carried out for the correction of defects.
- 11.3 You are required to implement quality assurance the scope and methods of which reflect the most modern state-of-the-art and to provide proof of such on request. If we consider this to be necessary, you shall conclude a corresponding quality assurance agreement with us. We are entitled to carry out - or to have carried out on our behalf - quality controls on your premises or those of your subcontractors at any time during the duration of the contract. No quality control however shall release you in any way from your contractual obligations and we shall not assume any additional responsibility. The material costs of the quality control shall be borne by you; we shall bear the personnel costs involved. However this shall no longer apply if considerable complaints lead to a repetition of the quality control. In this case you shall bear all personnel costs as well as any necessary expenses involved.

## **12.0 Liability**

- 12.1 Your liability is based on the legal provisions in force.
- 12.2 You shall be liable for all damages culpably caused by yourself or one of your employees or subcontractors to us, our employees or third parties, regardless whether or not your employees are integrated into our company whilst carrying out work on your contract with us. Should a claim be made against us due to such damage, you are obliged to indemnify us from any liability claims or costs resulting from this damage.
- 12.3 You are liable for all damages caused by an infringement of German legislation on protection against harmful effects on the environment and work protection in particular but not limited to legislation on air pollution, noise, vibrations and similar factors, on the disposal of waste oil, on the protection of water resources, on water pollution and on closed loop recycling management and waste disposal. This liability also includes all statutory orders and corresponding European legislation issued in connection with the above legislation. You are required to indemnify us from all liability claims made by third parties due to an infringement of the above legislation by you, your employees or subcontractors.

## **13.0 Insurance**

You are obliged to take out adequate third party liability insurance (and, if applicable, planning liability/professional indemnity) which is to be maintained until the fulfilment of the contract. You will also take out adequate insurance against all risks arising from product liability and danger to the environment. You are obliged to cover all risks in your company or within the framework of your activities which result from the German Environmental Damages Act (*Umweltschadensgesetz*). At our request you will present the appropriate insurance policies.

## **14.0 Right of Termination**

We shall be entitled to terminate the contract in case you cease delivery of goods and services, apply for insolvency or bankruptcy proceeding as well as voluntary liquidation.

## **15.0 Compliance with the guidelines of the Global Compact of the United Nations**

- 15.1 Due to the entry of our shareholder into the Global Compact of the United Nations, we also obligate ourselves as well as our Contractor to adhere to the Global Compact.
- 15.2 The compliance with the guidelines of the Global Compact includes specifically:
- observance of human rights
  - guarantee of adequate working conditions (abolition of forced labor, child labor and discrimination of any kind)
  - the prudent handling of the environment (promotion, development and distribution of environmentally friendly technologies)
  - actions against any kind of corruption
- 15.3 The Contractor is obligated to inform us immediately about any offenses against the above referenced guidelines within the Contractor's area of responsibility

- 15.4 We reserve the right to examine and possibly terminate our business relations, should we receive knowledge of infringements by the Contractor against the conditions mentioned under Number 15.1 to 15.3).

## **16.0 Miscellaneous**

- 16.1 Strict confidentiality shall be maintained over all commercial or technical details learned by you within the framework of your activities with us and which are not common knowledge as well as over all data and documentation handed over to you by us. Such details may not be disclosed by you to third parties. You will bind your subcontractors accordingly.
- 16.2 Models, drawings etc. which have been made at our expense or handed over by us shall remain our property. They may not be used in any other way but for the purpose of our contract, may not be reproduced and may not be disclosed to third parties. You shall be liable for any damages resulting from an infringement of this obligation. Unless otherwise agreed, such models, drawings, etc shall be returned to us free of charge at the time of delivery of the ordered goods/services.
- 16.3 Without our written consent you are not authorised to use our inquiries, purchase orders or other correspondence for advertising purposes.
- 16.4 Should individual or several provisions of a contract between us become invalid, this shall not affect the validity of the other parts of the contract. The parties to the contract are obliged to replace any invalid provision as soon as possible by a valid one which approximates the invalid provision commercially as far as possible.
- 16.5 Should the place of performance and fulfilment of this contract not be indicated in our purchase order it shall be the point of use. If the point of use is not indicated in our purchase order, the delivery address shall be the place of performance and fulfilment. In all other cases, including payments, the registered office of the company placing the purchase order in question shall be the place of performance.
- 16.6 The court responsible for the locality where the purchasing company is incorporated shall have exclusive jurisdiction.
- 16.7 German substantive law shall apply in addition to any contractual provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.