

## § 1 General terms, scope

- (1) These General Terms and Conditions of Purchase (hereinafter collectively referred to as the *PTC*) apply to all contracts concluded by TEW Technik-Energie-Wasser-Servicegesellschaft mbH (hereinafter referred to as *TEW*) for the purchase of products and services (hereinafter referred to as *Deliveries*) insofar as these PTC are included in the respective contract. Any terms or conditions of the seller or contractor (hereinafter referred to as the *Supplier*) that contradict or deviate from the PTC shall not be included in the contract unless TEW provides explicit written consent. This shall also apply where TEW has accepted the Deliveries without reservation while in knowledge of deviating terms and conditions of the Supplier.
- (2) Any legally binding declarations and notifications to be made after contract conclusion such as deadlines, reminders or withdrawals shall require the written or text form. If written form is required in this PTC, electronic signature, for example via DocuSign, shall be sufficient.

## § 2 Contract conclusion

- (1) Orders, call-offs and order changes from TEW (hereinafter collectively referred to as the *Order*) shall only be binding once issued in written or text form at the earliest. Verbal or telephone agreements, side agreements or amendments shall only become binding upon confirmation in written or text form by TEW. This shall also apply to additionally agreed deliveries or services. Silence on suggestions, proposals or claims from the Supplier shall not be considered as consent. All offers and cost proposals from the Supplier shall be issued free of charge unless otherwise agreed.
- (2) The Supplier shall immediately confirm each Order in writing or text form (acceptance or order confirmation, both hereinafter referred to as *Order Confirmation*). TEW shall no longer be bound by the Order after an appropriate period of time, if an Order Confirmation from the Supplier is not longer to be expected under regular circumstances. TEW may revoke the Order until the receipt of the respective Order Confirmation.
- (3) TEW may demand changes to delivery items, services, or date of delivery or service from the Supplier even after a contract has been concluded if this may reasonably be expected from the Supplier under due regard to the interests of both Parties. Contract changes shall give due consideration to the effects for both Parties, especially with respect to increased or reduced costs and delivery or service dates or deadlines.

## § 3 Delivery time, delays

- (1) Delivery and service periods as well as delivery and service dates (hereinafter referred to as *Delivery Dates*) as specified by TEW in the Order shall be binding on Order Confirmation from the Supplier. Without prejudice to further rights of TEW, the Supplier shall immediately inform TEW (if possible the contact person named in the Order) in written or text form without delay of any circumstances that have occurred or according to which it is recognizable that the Supplier will not be able to comply with the Delivery Date, stating reasons and expected duration of the delay.
- (2) The Supplier may only send partial deliveries or perform partial services after approval from TEW in written or text form.
- (3) The Supplier shall send all documentation (in particular: delivery notes, certificates of analysis, manufacturing documents, plant and equipment documentation) as necessary for further use of the products even if the supply of such documentation has not been expressly agreed. Delivery shall only be deemed complete on receipt of all required documentation.
- (4) If Supplier should fail to provide a service or deliver products at all or at the Delivery Date, TEW reserves all rights according to statutory provisions, especially the right to withdrawal and compensation for direct and indirect damages as well as reimbursement for expenses. The provisions in para. 5 shall remain unaffected. The acceptance of a delayed delivery shall not constitute a waiver on compensation claims.
- (5) TEW may demand compensation for damages caused by delayed delivery or service at a lump sum of 0.2 % of the net price per calendar day up to a total of 5 % of the net price of the delayed delivery or service from the Supplier in addition to specific performance and additional legal claims. TEW reserves the right to assert additional claims for damages. The Supplier reserves the right to prove that TEW has sustained minor or no damages, or that Supplier is not responsible for the delay.
- (6) TEW may refuse receipt of delivery, service, or acceptance, if acceptance is part of the contract, at the cost and risk of the Supplier for delivery before the agreed Delivery Date. The Supplier shall reimburse TEW for any additional costs such as warehousing or insurance if TEW does accept the delivery or service, and signs acceptance if acceptance is part of the Order. The agreed payment period for a premature delivery or service shall begin on the agreed Delivery Date at the earliest regardless of the actual date of delivery of the goods or services.

## § 4 Service, delivery, transfer of risk, property

- (1) The Supplier shall not have services owed to TEW performed by a third party such as a subcontractor without prior written approval from TEW unless otherwise agreed in an individual case. The Supplier shall bear the procurement risk for its services unless otherwise agreed in an individual case. Notwithstanding the above provisions, the Supplier shall bear the responsibility for actions or omissions of third parties engaged by the Supplier and for its own suppliers, the conduct of which is attributable to the Supplier, and shall remain responsible for specific performance according to the contract.

- (2) Deliveries shall be made DDP (Incoterms 2010) to the destination specified in the Order. The destination for delivery shall be the registered office of TEW in Dessau-Roßlau, Germany, if no destination has been specified and no other agreement has been reached. The respective destination shall also be the place of performance for the purposes of specific performance.
- (3) The Supplier shall immediately notify TEW of each delivery after execution by sending shipment notice. TEW shall not be held responsible for any delays in acceptance due to the Supplier's failure to send shipment notice. The Supplier shall include a delivery note stating the date (issue and shipment), delivery contents (article numbers and quantities), and SAP order number from TEW with the delivery. TEW shall not be held responsible for delays in processing and payment arising from a missing or incomplete delivery note.
- (4) The risk of loss or damage to the goods shall be transferred to TEW upon delivery at the destination of delivery. Acceptance shall constitute transfer of risk if acceptance has been agreed in the Order.
- (5) The transfer of title to the goods delivered to TEW shall take place with delivery of the goods. Transfer of title to the goods to TEW shall be unconditional and without regard to the payment of the purchase price. Unless otherwise agreed, all forms of retention of title, including expanded or extended reservation of title are excluded.
- (6) If TEW does accept the Supplier's terms of transfer of title as conditional upon purchase price settlement in an individual case, the Supplier's retention of title shall not exceed the amount of outstanding claims receivable for goods delivered and shall expire on payment of the outstanding amount at the latest. TEW shall remain authorized to process and resell the goods during regular business in pre-assignment of the resulting claims at the amount of the main principal to the exclusion of any other forms of retention of title, in particular expanded and assigned retention of title as well as extended retention of title to goods in further processing or alteration.

## § 5 Prices, terms of payment

- (1) All prices shall be quoted net plus statutory value-added tax at the time of the offer quoted separately.
- (2) Unless otherwise agreed in a particular case, the agreed price shall include all main and ancillary services from the Supplier (such as assembly and installation) including procured materials and utilities (such as proper packaging; shipping costs including any shipping and liability insurance) and all other costs, fees and charges (such as taxes and duties) in connection with the goods or deliverables. This shall also apply to any samples to be delivered where agreed. The Supplier shall at its own cost take back packaging materials including packaging for whole trading units at the request of TEW.
- (3) The agreed price shall be due for payment within 30 calendar days after complete delivery and performance or acceptance if acceptance has been agreed, and receipt of a proper invoice. The Supplier shall grant TEW a discount of 2 % if TEW makes payment of the net invoice amount within 14 calendar days. Payment shall be deemed to have been made on time by bank transfer if the transfer order has been received by TEW's regular bank before the due date. TEW shall not be held responsible for delays in payment by other banks involved.
- (4) TEW shall not owe interest payable after the due date. The default interest shall amount to five percentage points above the base rate. The statutory provisions shall apply in determining default.
- (5) TEW is entitled to offset and retention rights as well as defense of non-performance of the contract to the extent permitted by law. TEW may in particular withhold due payment where TEW still has claims against the Supplier due to incomplete or defective delivery or contract performance. The Supplier may only be entitled to offset or claim retention rights insofar as the counterclaims are acknowledged, undisputed or assessed in a legally binding judgement or for counterclaims based on the same transaction.

## § 6 Materials, documentation, confidentiality

- (1) TEW shall reserve all ownership rights including copyright to any illustrations, diagrams, drawings, calculations, implementation instructions, product descriptions, product specifications, manufacturing instructions or other documentation (hereinafter referred to as *Documentation*) provided by TEW. The Supplier shall keep the Documentation safe and return the Documentation to TEW after completing the contract or destroy the Documentation if requested to do so by TEW. The Documentation shall only be used for the contractual purpose. The Supplier shall maintain confidentiality on the Documentation towards third parties for a period of 5 years after termination of the contract except where the Documentation is to be passed on to affiliated companies according to the German Companies Act (AktG) §15 et seq. The Supplier shall impose similar confidentiality obligations on its own employees involved in the performance of the contract. This confidentiality obligation shall not apply where the knowledge contained in the Documentation is generally known to the public. The Supplier shall bear the corresponding burden of proof.
- (2) The above provisions shall apply to all other confidential information disclosed by one party to the other where such information is not publicly known, in particular financial, technical or other business or operational information.
- (3) The above provisions shall apply to substances and materials as well as tools, templates, samples, and other items that TEW provides to the Supplier for the manufacturing process. The Supplier shall store these items separately and insure them at a reasonable level against damage and loss. TEW shall reserve all ownership rights including copyright to the above items unless legal provisions demand transfer of title due to combining, mixing or processing.

- (4) The Supplier shall grant TEW the unrestricted, irrevocable, and transferable rights of use and exploitation of for all products and work results relating to the delivery or performance service for all known and unknown types of use. In particular, TEW shall be granted the right to exploit, copy, distribute, modify or further develop these work results in whole or in part, or have these activities performed by third parties. To the extent that the work results were developed individually by Supplier for TEW, the Supplier shall grant the rights described above exclusive to TEW. The granting of the rights of use and exploitation described above shall be covered in full by settlement of the purchase prices specified in the Order.
- (5) The Order shall be treated confidentially. The Supplier may only quote TEW as a reference to third parties with prior written consent from TEW.

## § 7 Defective deliverables, liability

- (1) Unless otherwise agreed, the statutory provisions shall apply to material and legal defects in delivered goods (including wrong and short deliveries, improper assembly or commissioning, defects in the assembly, installation or operation manual) or other breaches of obligation by the Supplier.
- (2) The Supplier shall in particular be liable according to statutory provisions that upon transfer of risk the delivered goods correspond to the agreed specifications and the usual condition, have no defects affecting its value and suitability, are fit for their contractual intended use and their general intended use, comply with generally acknowledged state of the art in science and technology and comply with applicable laws, regulations and standards, were delivered with the agreed and usual accessories and that the delivered goods correspond to the quality of any samples or specimens provided prior to the conclusion of the contract. Product descriptions and specifications specifically referred to by name or reference in the Order as part of the contract, that is, those specifications included in the contract, shall be deemed as agreed specifications regardless of whether the product description originates from TEW or the Supplier or manufacturer. Any negative descriptions of quality in the Supplier's general terms and conditions, which in particular contradict the requirements of the German Civil Code (BGB) §434, shall not apply
- (3) In variance to German Civil Code (BGB) § 442 (1) sentence 2, TEW shall retain the right to assert for defects even if the defect remained unknown to TEW upon conclusion the contract due to gross negligence.
- (4) The statutory provisions (German Commercial Code (HGB) § 377 and § 381) shall apply to the commercial obligation of TEW regarding inspection and objection of goods under the following terms: The obligation of inspection on the part of TEW shall be limited to defects that can be detected on external inspection on incoming goods including shipping documents (such as damage during shipping or wrong or short delivery) (obvious defects). The obligation of inspection shall not apply if acceptance has been agreed. The obligation of TEW to report defects discovered at a later time (concealed defects) shall remain unaffected. The obligation to inspect the goods and object defects shall only apply once the delivery has been fully completed. The Supplier shall react immediately to any notices on defects and respond at least within 2 working days.
- (5) The Supplier shall also bear the costs of inspection and remedy including any additional costs (such as dismantlement, installation and shipping costs) incurred by the Supplier even if no defect is found. TEW may only be considered liable for compensation for damages due to an unjustified claim for remedy if TEW has detected or, through gross negligence, failed to detect that there was no defect, but the cause of the defect lay within the sphere of responsibility of TEW.
- (6) Remedy shall be deemed unsuccessful if the Supplier fails to meet its obligation for subsequent performance by removing the defect (repair) or delivering a defect-free item (replacement) at the discretion of TEW within a reasonable period set by TEW. TEW may then remedy the defect itself or have the defect remedied by a third party, and demand compensation for or corresponding advance payment on the expenses incurred. This shall also apply to the dispensability of a deadline for remedy in accordance with the statutory provisions. In addition, a deadline shall be deemed dispensable if unreasonable for TEW, such as in endangerment to operational safety. TEW shall inform the Supplier immediately of any such circumstances.
- (7) TEW may otherwise reduce the purchase price or withdraw from the contract due to a material or legal defect according to statutory provisions. TEW shall also be entitled to claim for damages and reimbursement of expenses according to statutory provisions.  
TEW may also assert claims under a guarantee in addition to statutory claims if the Supplier has assumed a guarantee for the quality or durability of the delivery.
- (8) The Supplier warrants that the goods delivered by the Supplier are free from any third-party rights, and that their delivery or contractual use, also in combination or interaction with other items, and any services provided will not infringe patents or other third-party rights. The above provisions shall apply *mutatis mutandis* to legal defects.
- (9) The Supplier shall only engage sufficiently qualified staff to provide services according to the specifications of the Order and according to the current state of the art in science and technology and in compliance with the applicable laws and regulations. The statutory provisions shall apply in full to defective performance or other claims.

## § 8 Product and manufacturer's liability

- (1) The Supplier shall indemnify TEW from any third party claims arising from defective products according to Product Liability Act or manufacturer's liability where the cause of the defect lies within the sphere of influence or organization of the Supplier and the Supplier or a supplier to the Supplier have caused the defect in the product. TEW may also demand compensation from the Supplier for any resulting damages to TEW from the above, including reasonable legal costs. This shall include all costs and expenses of recalling a defective product.
- (2) The Supplier shall conclude a product liability insurance policy at a minimum coverage of € 10 million per claim resulting from damage to property or injury to persons, and to provide proof of insurance to TEW on request.

## § 9 Limitations

- (1) Claims between the Parties shall expire according to statutory provisions unless otherwise agreed.
- (2) In variance to the German Civil Code (BGB) § 438 (1) no. 3, the general limitations for defects shall amount to three years from transfer of risk or acceptance. The three-year limitation period shall also apply *mutatis mutatis* to claims arising from legal defects without affecting the statutory limitation period for claims for restitution of third parties according to German Civil Code (BGB) § 438 (1) no. 1. The original warranty period for the replaced or newly delivered goods or newly manufactured works shall recommence for subsequent performance unless the Supplier is recognizably not acting in fulfillment of its obligation to remedy the defect.
- (3) Limitation periods in commercial law including foregoing extension shall apply to all contractual warranty claims to the extent permitted by statutory provisions. The regular statutory limitations according to German Civil Code (BGB) § 195 and § 199 shall apply to any non-contractual claim to which TEW is entitled unless the application of commercial statutory limitations prescribe a longer limitation period in an individual case.

## § 10 Force majeure

- (1) Instances of Force majeure that prevent either party in whole or in part from fulfilling its obligations shall release both parties of the scope of performance affected from the fulfillment until the force majeure subsides. The party affected by force majeure shall notify the other party immediately, including information as of the effects for the fulfillment of the contract. Force majeure includes strikes and lockouts, floods, fires, war, insurrection, riots, civil unrest, embargoes, or sovereign interventions unforeseeable at contract conclusion, which the party affected cannot or cannot reasonably avert or circumvent. It is clarified, that COVID-19 pandemic, unavailability of raw materials or price increases of raw materials and unavailability of transportation services are not force majeure cases.
- (2) The affected party shall take every reasonable effort to eliminate, remedy or overcome such cases, and subsequently attempt to fulfill its contractual obligations as quickly as possible.

## § 11 Compliance, data protection, permits

- (1) TEW is committed to the basic principles on corporate responsibility and integrity, human rights, labor standards and anti-corruption requirements, as set out in particular in the 10 principles of the UN Global Compact ([www.unglobalcompact.org](http://www.unglobalcompact.org)). The Supplier therefore undertakes to comply with applicable law and regulations, in particular to protect human rights, to respect the freedom of association and the freedom to form unions, to eliminate forced and child labor, to fight corruption and distortions of competition and to comply with environmental standards, as regulated, inter alia, in the German Act on Corporate Due Diligence Obligations in Supply Chains of 16 July 2021 (Supply Chain Due Diligence Act). The Supplier further undertakes to enforce compliance with applicable law and regulations referred to in this clause as well as the human rights-related and environmental requirements vis-à-vis its own contractual partners by means of suitable contractual provisions. Compliance with and implementation of the aforementioned obligations by the Supplier constitute essential contractual obligations of the Supplier with regard to any contract. In the event of a breach of these obligations, TEW shall be entitled to terminate the respective contract with immediate effect and to demand compensation for the damage resulting from the breach. Further claims of TEW shall remain unaffected. In addition, the Supplier shall indemnify, defend and hold TEW, its employees, directors and officers harmless from any and all liabilities, costs, and damages resulting from a breach of this clause..
- (2) The Parties undertake to comply with the current valid data protection regulations according to the General Data Protection Regulation (GDPR) and the Bundesdatenschutzgesetz (BDSG) [Federal Data Protection Act]. This also includes technical security measures adapted to the current state of art and technology (Art. 32 GDPR) and the obligation of employees to maintain data secrecy. The Parties agree that order data processing with the meaning of §62 BDSG is not part of this contract.
- (3) The Supplier shall ensure the regulatory approvals, licenses, and registrations necessary to provide the deliverables and services.

## § 12 Applicable law, jurisdiction and miscellaneous terms

- (1) The law of the Federal Republic of Germany to the exclusion of international law, in particular the United Nations Convention on Contracts for the International Sale of Goods (UN CISG), shall apply to the PTC and all legal relationships between TEW and the Supplier.
- (2) The place of jurisdiction for all disputes, domestic or international, arising from this contractual relationship shall be at the business headquarters of TEW in Dessau. However, TEW may also litigate at the place of performance.
- (3) Should any provisions in the PTC be or become wholly or partially invalid or for legal reasons not be executable in the intended manner the validity of the remaining provisions shall not be affected thereby. The Parties shall replace the invalid or unenforceable provision by a provision that comes as close as possible to the intent and purpose of the invalid provision from a commercial and legal perspective.