

## Terms and Conditions for Purchasing

WT Energiesysteme GmbH, Uttmannstr. 15, 01591 Riesa, Deutschland  
Status: October 2017

### § 1 General Provisions

1. The present Terms and Conditions for Purchasing (hereinafter called „**TCP**“) are valid for all business relationships with our suppliers and subcontractors (hereinafter called „**Contractor**“). The TCP are only valid if the Contractor is an entrepreneur pursuant to §§ 310 para. 1, 14 BGB, a corporate body under public law or a special estate under public law.
2. In particular, the TCP are valid for contracts on the sale and/or the delivery of movable goods, regardless of whether the Contractor manufactures the goods themselves or purchases them from sub-suppliers, as well as for contracts on other work performances or services.
3. The TCP are valid in the version that is currently valid at the time of closure of contract. This shall equally apply to future contracts of similar content, without an obligation to particularly highlight this or to refer to this.
4. These TCP shall be valid exclusively. Deviating, contrary or supplementary terms or conditions of the Contractor shall only become part of the Contract if we have explicitly agreed to this in writing. This requirement of approval shall be universally applicable, e.g. also in the case that we have knowledge of the Contractor's terms and conditions and accept them without reservation.
5. Individual agreements made and referring to individual cases shall take precedence over these TCP. The content of such agreements shall be laid down in writing and has to be approved by us in writing.
6. Legally relevant/material declarations and notices (e.g. deadlines, reminders, cancellations etc.) that the Contractor is obliged to submit to us after closure of contract shall only be valid if submitted in writing.
7. References to the applicability of legal provisions are of clarifying character only. Thus, legal provisions shall also apply without such clarifications or references if they are not altered directly or excluded explicitly in these TCP.

### § 2 Conclusion of Contract

1. Our order shall be binding no sooner than it has been submitted or approved by us in writing. For the purpose of correction and/or completion, the Contractor has the obligation to notify us of any obvious mistakes such as misspellings, miscalculations and/or omissions in the order and/or the order documentation before accepting it. Otherwise, the contract shall be null and void.
2. The Contractor shall confirm our order within fourteen (14) calendar days (hereinafter called „**Acceptance**“). A delayed Acceptance shall be deemed to be a new offer and needs to be approved by us in order to attain validity.

### **§ 3 Times and Delays**

1. The delivery date(s) and/or performance period(s) indicated in our order shall be binding. If no such date or period has been specified in the order or agreed otherwise, the delivery date and/or performance period shall be four weeks after conclusion of contract. The Contractor is obliged to notify us in writing without delay if they are unable to adhere to agreed delivery dates and/or performance periods.
2. A postponement of the delivery date(s) and/or performance period(s) can only be considered in well-founded cases and requires our prior approval.
3. If the Contractor does not deliver the goods or perform the services on the agreed date or within the agreed period, our rights are governed by the legal provisions on default.
4. If the Contractor is in default as per para. 3, we can claim Liquidated Damages of 0.25 % of the net contract price per calendar day. The cap for Liquidate Damages is 20% of the net price for the delayed deliveries and/or services.
5. We retain the right to claim Liquidated Damages in addition to the performance and as a minimum amount that shall be part of damages payable by the Contractor pursuant to the legal provisions but without prejudice to the right to claim additional, further damages.
6. If we accept delayed deliveries and/or services, we shall claim Liquidated Damages no later than at the time of final payment.

### **§ 4 Delivery and Performance**

1. The Contractor must not have their deliveries and/or performances carried out by a third party without our prior approval. The Contractor shall bear the procurement risk without prejudice to individual agreements.
2. Deliveries shall be performed at the place specified in the order. If no delivery address is specified in the order, the goods shall be delivered to our headquarters in Riesa, Germany. The respective destination is also the place of performance of delivery and of supplementary performance if applicable.
3. A delivery note indicating the issue date and the despatch date, the contents of the delivery with item numbers and item quantities and our order ID with date and order number has to be attached to said delivery note. If the delivery note is missing or incomplete, we shall not be held responsible for any resulting delays in processing and payments.

### **§ 5 Passing of Risk and Default of Acceptance**

1. The risk of accidental perishing and/or accidental deterioration of goods passes to us upon handover at the place of delivery. If an acceptance procedure is required or has been agreed, the conclusion of this procedure marks the passing of risk. In general, the law applicable to works and services shall apply accordingly in case of acceptance procedures. The goods shall be deemed accepted if we are in default of acceptance.
2. For the occurrence of default of acceptance, the respective legal provisions apply. The Contractor is obliged to explicitly offer their performance even if a definite time or a time definable per calendar has been agreed for an action or cooperation from our side.
3. If we are in default of acceptance, the Contractor may claim compensation for his additional expenses acc.to applicable legal provisions (§ 304 BGB).

## **§ 6 Prices and Payment Terms**

1. The price specified in the order is binding. All prices shall be deemed to include VAT if VAT has not been excluded or is not shown separately.
2. If no other individual agreements have been made, the price includes all of Contractor's services, deliveries, ancillary services, ancillary deliveries, ancillary expenses as well as Contractor's overhead.
3. The agreed price shall be due for payment within forty-five (45) calendar days after complete delivery and/or performance including any and all required and/or agreed acceptance procedures as well as receipt of a complete and correct invoice. If we effect payment within twenty-one (21) calendar days, the Contractor shall grant us a discount of three per cent (3%) of the net invoice total. In case of bank transfers, the relevant date is the date of credit entry on the account specified in Contractor's invoice.
4. We retain the rights of set-off, retention and defence of lack of performance of contract acc.to applicable legal provisions. In particular, we retain the right to withhold payments due as long as we still have claims against the Contractor arising from incomplete or faulty performance(s).
5. The Contractor shall only have rights of set-off and retention on the basis of legally verified or unchallenged counterclaims.

## **§ 7 Reservation of Title**

The title to the goods or performed services shall pass to us unconditionally and regardless of payment of the purchase price. If we accept an offer by Contractor under the condition of passage of title upon payment, we shall retain the right of resale within the proper course of business even before payment of the purchase price under advance assignment of the receivables resulting from this.

## **§ 8 Workforce, Minimum Wages, Occupational Safety**

1. The Contractor is obliged to adhere to the applicable legal provisions on occupational safety, especially to those of the Occupational Safety Act.
2. The Contractor affirms that they shall only employ personnel originating from countries outside the European Union if such personnel possess valid work permits and valid social insurance identity cards.
3. The Contractor affirms that they fulfil all obligations of payment of minimum wages and of social security contributions acc.to the employee assignment law as well as acc.to SGB IV and SGB VII.
4. The Contractor shall indemnify and hold us harmless from all and any claims arising from any violation of the above-mentioned laws and regulations and/or brought forth against us based on guarantor liability acc.to § 14 Arbeitnehmerentendegesetz (employee assignment law) and/or § 28e SGB IV and/or § 150 SGB VII.
5. We retain the right to impose further obligations to the Contractor that have been imposed on us by our Clients and to obligate the Contractor to the same extent. We shall notify the Contractor about this at conclusion of contract.
6. In case of violation of the provisions made and obligations specified in the above paragraphs, we shall have the right to bring forth claims to the Contractor for compensation of damages sustained

by us including possible liquidated damages agreed upon with our clients as a consequence of such violation.

### **§ 9 Faulty Performance**

1. With regard to our rights in terms of material defect and defect of title and of other breaches of obligation by the Contractor, the applicable legal provisions apply as far as nothing else is determined below.
2. Acc.to legal provisions, the Contractor is especially liable for the properties the goods have been agreed to have at passing of risk. As agreement on the properties of goods such product descriptions shall apply as have become part of the respective contract by means of naming them or referring to them in our order or that have been included in the contract in the same way as these TCP.
3. With regard to the commercial obligation to make a complaint in respect of a defect immediately on receipt of the goods and the obligation of inspection, the legal provisions apply with the following limitation:

Our obligation to inspect is limited to such defects that become obvious at our incoming goods inspection consisting of a visual inspection of the exterior and the delivery documents as well as in our random quality testing. As far as an acceptance procedure has been agreed, an obligation to inspect does not apply. In general, this depends on the extent to which an inspection is doable under consideration of individual circumstances of the case in question and acc.to proper course of business. Our obligation to make a complaint in respect of a defect detected at a later stage remains unaffected. In all cases, our complaint shall be considered immediate and in time if the seller receives it within five (5) business days.

4. The expenses for the purpose of inspection and supplementary performance shall be borne by the Contractor even if there is the finding of no actual defect existing or having existed. Our liability for damages in case of unjustified claims for the rectification of defects remains unaffected as far as we realised or, due to gross negligence, failed to realise that no defect existed.
5. If the Contractor does not fulfil their obligation to rectify/of supplementary performance within a reasonable period of time prescribed by us, we retain the right to rectify the defect or to effect the supplementary performance ourselves and to claim compensation for or advance reimbursement of the expenses necessitated by Contractor's default.
6. If our clients cannot conclude project acceptance procedures due to defects and/or defaults the Contractor is responsible for, we have the right to put forth claims to the Contractor for compensation for damages we sustain and incur including possible liquidated damages agreed upon with and claimed by our clients.

### **§ 10 Manufacturer's Liability**

1. If the Contractor is responsible for a defect of product, the Contractor shall indemnify and hold us harmless from any and all claims of third parties as far as the cause is found in Contractor's domain and range of organisation and the Contractor is subject to exterior liability.
2. Within the scope of his obligation to indemnify, the Contractor has to reimburse us for expenses acc.to §§ 683, 670 BGB that accrue from or in connection with third-party claims including call-backs performed by us. We shall notify the Contractor of the content and extent of call-backs as far as possible and reasonable and shall give the Contractor the opportunity to issue a statement. Further legal claims remain unaffected.

3. The Contractor shall take out and maintain product liability insurance with all-inclusive coverage of a minimum of € 10 million per occurrence of damage to persons or property.

### **§ 11 Limitation**

1. The mutual claims of the parties to the contract lapse and expire acc.to applicable legal provisions as far as nothing else is determined below.
2. In deviation from §§ 438 para. 1 No. 3, 634a para. 1 No. 1 BGB, the general period of limitation for claims based on defects is three years after passing of risk. Otherwise, the legal limitation periods apply, in particular with respect to the five-year period of limitation that applies to buildings acc.to §§ 438 para. 1 No. 2, 634a para. 1 No. 2 BGB.
3. As far as an acceptance procedure has been agreed or is required by law, the period of limitation starts upon conclusion of the acceptance procedure.
4. Correspondingly, the three-year period of limitation is also valid for claims based on defects of title without prejudice to third-party claims of surrender in rem acc.to § 438 para. 1 No. 1 BGB. The afore-said notwithstanding, claims based on defects of title do not expire in any case as long as the third party can still assert their claims against us especially due to a lack of limitation.
5. The period of limitation of claims of defects against our subcontractors as our Contractors shall not begin before the commencement of the period of limitation against our clients in our function as main contractor.
6. The periods of limitation of the Law on the Sale of Goods as well as the law applicable to works and services including the above-determined extension apply within the limits of statutory regulations for all contractual claims of defects. As far as we are also entitled to damage claims outside the contract, such claims shall be subject to the regular periods of limitation prescribed by law if the application of the periods of limitation of the Law on the Sale of Goods or the law applicable to works and services does not lead to a longer period of limitation in the individual case concerned.

### **§ 12 Choice of Law and Court of Jurisdiction**

1. The Contract closed between us and the Contractor is subject to the Law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
2. The courts of Dresden, Germany, shall have exclusive jurisdiction for all disputes arising from the respective contractual relationship. This does not affect mandatory legal provisions on exclusive jurisdiction.

### **§ 13 Final Provisions**

1. If any of the provisions in these TCP are invalid, inexecutable or missing for any reason, this shall not affect the validity of the remaining provisions of the contract.
2. In lieu of the invalid, inexecutable or missing provision, such valid and executable provision shall be deemed agreed between the parties as the parties would have agreed upon under consideration of the economical purpose of these TCP or the contract if the parties had been aware of the invalidity, inexecutability or lack of the provision concerned at the time when they entered into this Agreement.