

## 1. Area of application

- (1) These purchasing terms and conditions (hereinafter referred to as "PTC") apply to all orders placed by G+E GETEC Holding GmbH as well as to all companies in Germany affiliated with G+E GETEC Holding GmbH in accordance with Section 15 of the German Stock Corporation Act (AktG) (hereinafter referred to as "GETEC"). These PTCs apply only if the contractor is an entrepreneur in accordance with Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.
- (2) Terms and conditions or other contractor conditions that deviate from, contradict or supplement these PTCs shall only be binding on the parties if they have expressly agreed to their validity.
- (3) Any reference in GETEC's purchase order to the contractor's documents shall not constitute an acceptance of any terms and conditions or other contractor conditions. The same shall apply to GETEC's unconditional acceptance of deliveries or services from the contractor.

## 2. Conclusion of the contract

- (1) The contract is concluded when the contractor accepts the order sent to it by GETEC. GETEC's order shall only be binding if it is placed in writing or automatically generated from a data processing system. If the latter is the case, the order contains information about the machine creation. Written form also includes scans of signed documents sent by e-mail. Acceptance is to be declared to GETEC in at least text form (e.g. e-mail). Changes to the contract must be made in writing.
- (2) GETEC expects to receive acceptance in the form of an identically-worded order confirmation within five working days after receipt of the order. If GETEC has not received an order confirmation by that time, GETEC reserves the right to revoke the order.
- (3) In the event of receipt of the delivery or performance of the service within the period mentioned above, order confirmation shall be waived.
- (4) The order number shown on the order and the name of the party placing the order must be stated in all correspondence. GETEC shall not be liable for any delays resulting from non-compliance with this obligation, e.g. the return of an invoice that does not comply with the contract.

## 3. Scope of services

All deliverables and services owed by the contractor are listed in the purchase order and the attachments listed in the purchase order as well as in these PTCs.

## 4. Deadlines

- (1) The deadlines specified in the order are binding. If the contractor does not provide its contractually owed deliverables or services, or does not provide them in full or on time, GETEC's rights shall be determined in accordance with the statutory provisions.
- (2) Without prejudice to the rights mentioned above, GETEC shall be notified of any delays immediately after they become known, but before expiry of the delivery or performance period, stating the reasons and the expected duration of the delay.
- (3) Force majeure or circumstances for which the contractor is not responsible will only exonerate the contractor if the contractor immediately informs GETEC of all circumstances considered in this respect.

- (4) If the delivery date is postponed by GETEC, all payments in return shall also be made at correspondingly changed points in time.
- (5) In the event that a postponement is a period of more than three months, the parties shall reach appropriate agreements on the effects.

## 5. Delivery

- (1) Deliveries are to be made to the place of delivery specified in the order DDP (Incoterms 2010). If no location for performance is specified in the order and nothing to the contrary has been agreed, delivery shall be made to the place of business of the ordering GETEC entity.
- (2) The volumes ordered are binding. Partial deliveries will only be permitted with GETEC's written consent. In such cases, the outstanding remaining quantity must be shown on the delivery note. In the event of over or under-delivery, GETEC reserves the right to refuse acceptance or to return the delivery at the risk and expense of the contractor.
- (3) If GETEC does not return ordered goods in the event of early, unexpected delivery, GETEC may store the goods until the agreed delivery date at the contractor's expense and risk. In such cases, the due date of the invoices concerned is based on the agreed delivery date.
- (4) Goods to be delivered shall be packaged appropriately and in a form commonly used in the trade. The contractor is liable for damage resulting from inadequate packaging.
- (5) The contractor shall take back packaging in accordance with the packaging regulations in effect at the time of conclusion of the contract. In such cases, GETEC shall expect environmentally sound disposal, including appropriate proof of disposal if required.
- (6) Delivery notes shall contain at least the following information: Purchase order number(s) and purchase order item(s) (insofar as these are indicated on the purchase order), indications of the delivery item(s), quantities in units, delivery date.

## 6. Transfer and/or acceptance

- (1) Acceptance of the delivery and countersigning the relevant delivery note shall serve as GETEC's acknowledgment of performance in the case of a delivery. GETEC will inspect the delivery for any defects within a reasonable period of time and, if necessary, notify the contractor of such defects. The complaint shall be deemed to be in time if it is received by the contractor within a period of ten working days from receipt of the delivery. The contractor expressly waives the objection of late notification of defects pursuant to Section 377 of the German Commercial Code (HGB), unless the defect is obvious. If work is the subject of the contract, an acceptance has to take place in accordance with Section 640 Paragraph 1, Sentence 1 BGB. Unless specified otherwise in the order, this shall be carried out within 20 working days of completion of the service. The contractor shall notify GETEC in writing of the completion of the work.
- (2) Any delivery or service must be free of material defects and defects of title and must comply with the recognized rules of technology and the contractually agreed specifications, standards and safety, occupational health and safety, accident prevention and other regulations.

## 7. Prices/ payment conditions

- (1) The agreed total price is a fixed price and is binding. The fixed price includes all supplementary services required for performance of the contract (e.g. transport, travel and accommodation costs, packaging, insurance, testing and acceptance costs). The fixed price does not include statutory value added tax and, where relevant, delivered, duty paid (DDP Incoterms 2010) and including unloading and packaging.
- (2) The payment period is 30 calendar days and commences at the earliest upon receipt of an invoice that meets the requirements of clause 8, but not before transfer or successful acceptance. The date of receipt of the invoice is the date of the receipt stamp. If GETEC makes the relevant payment within 14 calendar days of receipt of the invoice, the contractor grants a 3% discount on the net amount of the invoice in each case.
- (3) No interest on arrears shall be owed by GETEC. The statutory provisions apply to default in payment.
- (4) The statutory provisions shall apply to rights of set-off and retention as well as to the defense of non-performance of the contract, unless otherwise provided for in these PTCs. In particular, GETEC shall be entitled to withhold payments due as long as claims arising from incomplete or defective deliveries or services are still due to GETEC against the contractor.

## 8. Invoicing

- (1) The contractor shall indicate in its invoices the purchase number, order position number and the project number (insofar as this has been indicated in the order) and, wherever relevant, whether the invoice in question is a partial invoice or a final invoice.
- (2) Copies of the delivery notes or acceptance reports countersigned by GETEC and, if applicable, timesheets shall be attached to the invoice. If the invoice is not sent electronically, it must be unstapled.
- (3) Each invoice may only refer to exactly one order (no collective invoices).
- (4) Each invoice must be accompanied by the VAT ID No. and the IBAN and BIC.
- (5) The invoice must comply with the requirements of Section 14 Paragraph 4 of the German Value-Added Tax Act (UStG).
- (6) Invoices that do not comply with the contractual requirements may be returned to the contractor by GETEC.

## 9. Accident prevention/ environmental and health protection

- (1) If the place of performance in accordance with Section 5.1 is located on the third-party premises, the contractor is obligated to find out about the regulations applicable to him there (e.g. plant safety regulations) and to comply with them.
- (2) If necessary, the contractor shall also obtain information at the place of performance from the competent specialists for occupational health and safety, environmental protection and fire protection about the requirements, accident prevention, environmental protection and fire protection regulations that are in place for the place of performance. The necessary measures must be coordinated with the appropriate specialists on site.
- (3) The contractor shall indemnify GETEC and the persons assigned by GETEC with the implementation or supervision of accident prevention, environmental protection, plant safety, fire protection, hazardous materials regulations and site management against all claims against GETEC or the aforementioned persons for damages

arising from a breach of the regulations to be observed by the contractor in connection with the performance of its contractually owed deliveries or services and for which the contractor is responsible. This also applies to claims arising from damage for which the contractor is responsible and which occurs during the execution of work on third-party premises (e.g. utility and waste disposal lines); the contractor must obtain detailed information about such third-party premises from all responsible authorities before commencing the services owed under the contract.

## 10. Transfer of receivables / offsetting and retention rights

- (1) Receivables of the contractor against GETEC may only be transferred or pledged to third parties with the written consent of GETEC.
- (2) The offsetting of receivables by the contractor is only permissible if these receivables are undisputed or have been legally established.
- (3) Rights and obligations arising from the contractual relationship may only be transferred to third parties with the prior consent of the other contracting party.

## 11. Transfer of risk and ownership

The risk of accidental loss and accidental deterioration of the deliveries or services owed by the contractor under the contract shall be borne by the contractor until transfer or acceptance of the contractually owed service by GETEC.

## 12. Warranty / liability for defects

- (1) GETEC's warranty rights in the case of material defects and defects of title in the deliveries and services owed by the contractor under the contract, and in case of other breaches of duty by the contractor, are governed by the statutory provisions, unless otherwise stipulated in these PTCs.
- (2) The warranty period begins with the complete transfer or with the successful acceptance.
- (3) So-called hidden defects that only become apparent following transfer or acceptance, but within the warranty period, shall be reported by GETEC within two weeks of their discovery at the latest. In the case of such defects, it shall be presumed that the item was already defective at the time of transfer of risk, unless this presumption is incompatible with the nature of the item or the defect.
- (4) GETEC is entitled to remedy the defect itself or have it remedied by third parties at the contractor's expense if there is imminent danger or a particular urgency, e.g. in the event of a risk to operational safety or the threat of disproportionate damage. In this case, the contractor shall be informed by GETEC before the work is carried out, if possible.
- (5) The contractor ensures that its contractually owed deliveries or services are free of third party rights, in particular free of trademarks, patents, copyrights or other industrial property rights of third parties. The contractor indemnifies GETEC against all claims by third parties due to any infringement of its rights to the contractor's deliveries or services. GETEC is entitled to make unrestricted use of the deliveries or services provided by the contractor.

## 13. Insurance

The contractor shall take out business and product liability insurance (whereby liability due to damaging effects on the environment and all consequences resulting from such damage must also

be covered) - unless a different amount of coverage is stipulated in the contract - with a minimum coverage of 5 million euros. The contractor shall also maintain this coverage throughout the term of the contract.

#### **14. Minimum wage/ German law on the posting of workers**

- (1) The contractor shall comply with the Minimum Wage Act and the Employee Posting Act as currently amended and shall ensure that the aforementioned laws are also complied with by third parties used by the contractor for the performance of its contractually owed services. In particular, the contractor shall reimburse its employees at least the statutory minimum wage in accordance with the Minimum Wage Act, unless a higher remuneration is owed by it under the applicable collective bargaining agreements or employment contracts. The contractor shall also impose these obligations on any third parties it uses to perform its contractually owed services and verify compliance with them. At GETEC's request, the contractor will provide suitable evidence of compliance with the Minimum Wage Act and the Employee Posting Act that satisfies any official inspections pursuant to the Minimum Wage Act or the Employee Posting Act.
- (2) The contractor fully indemnifies GETEC against any liability or obligation of GETEC toward third parties due to a violation of the Minimum Wage Act and/or the Employee Posting Act on the part of the contractor or a third party commissioned by the contractor.

#### **15. Secrecy / data protection**

- (1) The contractor is obligated to maintain secrecy with regard to all information it receives in connection with the order concerning GETEC or the subject matter of the order, unless such information is generally or otherwise lawfully known to it.
- (2) The contractor is obligated to comply with applicable data protection regulations. In particular, the data protection information pursuant to the EU General Data Protection Regulation apply to authorized representatives/authorized representatives of "legal entities" in accordance with Section 12 ff of the General Data Protection Regulation. [\[https://www.getec-energyservices.com/media/customer/3099\\_544\\_1.PDF?1548152413\]](https://www.getec-energyservices.com/media/customer/3099_544_1.PDF?1548152413)

#### **16. Applicable law / place of jurisdiction**

- (1) These PTCs are governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the Vienna Convention on Contracts for the International Sale of Goods dated April 11, 1980 and the conflict of laws provisions. Contract language is German.
- (2) Insofar as there are no mandatory statutory provisions to the contrary, Magdeburg is agreed as the place of jurisdiction for all disputes arising from this contract.

#### **17. Miscellaneous**

Should a provision in these PTCs or a provision of a contract based on these PTCs be or become invalid, it shall not affect the validity of all other provisions or agreements. The provisions of Section 139 of the German Civil Code shall be deemed excluded.

Care should be taken to send only one pdf file as the electronic invoice.