

General Purchase Conditions Agrana Stärke GmbH Österreich

Version: July 2018

Unless agreed otherwise in writing between the parties to the contract, the following purchase conditions apply exclusively:

1. Scope of Validity

1.1 The Ordering Party agrees with Contractor for all enquiries, orders, purchases and other legal transactions and services for the procurement of deliveries and services the general terms and conditions for purchase for deliveries and services as set out below.

1.2 Contractor acknowledges that Ordering Party already now objects to any and all deviating general terms of conditions of Contractor, such as set out in order confirmations or business correspondence. Especially the acceptance of deliveries or acceptance of services or their payment do not constitute consent to general terms and conditions deviating from the ones set out herein.

1.3 The agreement of terms and conditions deviating from the ones set out herein shall require the written confirmation of Ordering Party to be valid.

1.4 In case of disagreements among individual components of the agreement between Ordering Party and Contractor, the following priority applies: (i) the order; (ii) annexes that are part of the order, such as a negotiation record; (iii) these T&C for purchase.

1.5 Neither the order nor the T&C for purchase shall limit further statutory claims of Ordering Party.

2. Conclusion of contract and reservation of withdrawal

2.1 For Ordering Party, the contract is only deemed concluded upon Ordering Party placing an (SAP) order in writing.

2.2 Contracts and orders of Ordering Party shall be deemed accepted if they are not rejected in writing immediately after receipt.

2.3 In case of justified indications that problems with delivery dates or deliveries or insufficient cover for liability and warranty claims of Ordering Party are likely, Ordering Party is entitled to withdraw from any contracts and orders that were placed at any time. This is in particular the case if the economic situation of Contractor deteriorates considerably or if insolvency proceedings against the assets of Contractor are rejected due to insufficient funds.

3. Pricing

The prices listed in the order are unchangeable fixed prices for the time between contract conclusion until the delivery or service is completed, which are not subject to any form of price variation or adjustment.

4. Letter of representation

As part of their scope of deliveries and services, Contractor shall provide all deliveries and services required for the agreed success, even if these are not mentioned or listed in the request of Ordering Party, the technical documents, the order or in any other documents of Ordering Party.

5. Pricing and transfer of risk

5.1 Ordering Party and Contractor agree for pricing, transfer of risk and customs obligations in terms of Incoterms 2010 for deliveries and services at an agreed destination within the European Union DAP (Delivery At Place), outside the European Union DDP (Delivery Duty Paid).

5.2 The transfer of risk for any assembly of deliveries owed by Contractor shall take place immediately after acceptance was completed.

6. Advance payment

Ordering Party shall only effect any advance payment agreed in the order in return for issuance of an advance payment invoice and under the further condition of complete securing of repayment by an irrevocable, abstract bank guarantee submitted at the cost of Contractor that is payable on first request, issued by a bank accepted by Ordering Party.

7. Partial payments / partial deliveries

7.1 Ordering Party shall only effect any partial payment agreed in the order in return for proof of contract-compliant delivery or service by Contractor (PAYMENT MILESTONE) for this partial payment and the takeover or acceptance of delivery or service and in return for issuance of an auditable invoice.

7.2 Ordering Party reserves the right to reject partial deliveries that were not agreed or to cancel remaining quantities.

8. Issuing of invoice and payment target

8.1 Contractor shall submit the final invoices no later than thirty days after contract-compliant provision of the delivery or service and takeover or acceptance thereof.

8.2 Invoices have to be prepared in a format that allows Ordering Party to review this with reasonable effort, and have to be sent as readable PDF file by e-mail to 3200.invoicing@agrana.com only. Invoices for deliveries and services that were ordered under a system order have to include the order number of Ordering Party as a reference. Invoices for deliveries and services that were ordered without a system order have to include the full name and the five-digit Agrana reference ID of the ordering individual. The documents required for review of the deliveries and services (quantity calculations, price conversions, drawings, delivery notes, hour reporting, service reports and other such) must be attached in a concise manner. If more than one invoice is sent in one envelope, the annexes must be attached to the respective invoice. The invoices must meet the requirements applicable in Austria, especially in regard to value added tax. Contractor agrees to

8.3 If an invoice is deficient in terms of section 11 Value Added Tax Act or clause 8 of these general terms and conditions for purchase, it shall be returned to Contractor for correction within 30 days and shall be resubmitted by Contractor within 30 days. The payment term shall commence again upon receipt of the fault-free invoice.

Issuance of a credit note pursuant to section 11 (8) VAT Act. Ordering Party shall have the right to return the invoice even if only one document required for a review is missing.

8.4 If partial payments and any bank guarantee that is to be submitted with the first partial payment were agreed, the latter has to be submitted in the original together with the advance payment invoice, also to the invoice address set out in 8.2. The total delivery or service has to be invoiced in the final invoice, the final invoice shall also include any contractual penalties, bonuses and similar. Contractor shall, however, not have the right to offset claims against counterclaims of Ordering Party. By submitting the final invoice, Contractor declares to have invoiced all

deliveries and services associated with the execution of the order and all other claims and expressly waives asserting any form of additional charges arising from the contractual relationship in question or any other legal relationship, irrespective of its form.

8.5 The final invoice shall be designated as such, if partial invoices were issued beforehand. Any partial payments already made shall be listed in the final invoice.

8.6 The payment targets for partial and final payments set out in the order shall be calculated by Ordering Party after contract-compliant takeover or acceptance of the service and after having received an auditable invoice. Invoices shall only be paid subject to the conditions set out in the order of Ordering Party or in framework agreements that were concluded. Ordering Party shall only accept an invoice for packaging if this was expressly agreed. The payment term commences upon provision of the delivery or service in a form that can be accepted and on the invoice date.

9. Engineer liability

Contractor guarantees the accuracy and completeness of engineering services, consulting and documentation.

10. Liability for documentation

Contractor is aware of the special importance of compliance with their obligations associated with the documentation and accepts liability for delayed or faulty documentation.

11. Liability of Ordering Party towards Contractor

11.1 Ordering Party shall not accept liability towards Contractor for third-party damage caused by Contractor.

11.2 Ordering Party does not accept any liability or joint liability for their cooperation in the delivery or service, especially for accompanying supervision, and in regard to providing specifications and documentation to Contractor; Contractor waives any objection of joint liability in this context.

12. Assertion of claims by Contractor

12.1 Contractor shall keep records of deliveries and services that are not part of the agreed scope of deliveries and services and shall submit these records to Ordering Party within seven days after start of these deliveries or services for confirmation and acknowledgement of type and scope of these deliveries and services in writing, under penalty of otherwise losing payment claims.

12.2 Other claims of Contractor towards Ordering Party, irrespective of their legal grounds, shall be submitted to Ordering Party in writing and with detailed proof within 14 days of the incident which gave rise to such claim and must set out the exact amount of the claim of Contractor; if Contractor fails to do so, their claims are invalid.

13. Third-party claims

Contractor shall hold Ordering Party harmless and indemnify Ordering Party in regard to all claims of third parties in connection with non-provision or non-contract compliant provision of their deliveries and services.

14. Assignment/pledging

Any assignment, pledging or other transfer of rights and obligations of Contractor shall only be permissible subject to written approval of Ordering Party.

15. Rights of lien / rights of retention

15.1 Any creation of rights of lien, rights of retention or other securities regarding parts ordered by Ordering Party or regarding the deliveries/services or parts thereof is excluded.

15.2 Contractor shall make sure that an equivalent provision is included in all contracts with their subcontractors.

16. Insurances

16.1 Contractor is obliged to take out any insurance required for their scope of deliveries and services themselves. On written request of Ordering Party, Contractor shall be obliged to forward any documents required to verify valid insurance cover to Ordering Party. In this case, Ordering Party shall have the right to obtain information regarding these insurance contracts from the respective insurance.

16.2 Contractor commits to payment of the premiums in time and to submission of a confirmation by the insurance regarding the time of payments being due and having been made to Ordering Party.

16.3 The conclusion of this or any other insurance contracts shall not limit the obligations and liability of Contractor in any way, also if Ordering Party does not raise any objections against the insurance policy submitted by Contractor on request of Ordering Party.

17. Place of fulfilment

Agreed as place of fulfilment is the final destination specified in the order. For Contractor, this applies in particular to delivery, performance and payment, independent from any agreements on place of delivery, performance or payment or any assumption of transport costs by Ordering Party.

18. Delivery terms

18.1 Contractor shall be liable for strict compliance with the shipping instructions of Ordering Party set out in the order.

18.2 Contractor shall continuously monitor the type of the delivered and deliverable goods and shall inform Ordering Party of any defects and errors, especially construction and manufacturing errors, in detail and without undue delay. The same applies to any change of the state of the art in science and technology. If such changes to delivered items turn out to be defective of faulty, the supplier shall inform us thereof immediately and shall collect such defective or faulty products at own costs.

18.3 Contractor shall make all deliveries exclusively to the destination specified by Ordering Party and at the risk of Contractor. Unless agreed otherwise, all deliveries are agreed as free ex ramp or ex warehouse. If delivery to the agreed destination is not possible for reasons that Ordering Party is responsible for, Ordering Party must be contacted immediately.

19. Transfer of ownership

Ownership is transferred to Ordering Party either upon payment or upon acceptance of the (partial) delivery or acceptance of the (partial) service of Contractor, whichever happens first. Any reservation of title on the part of Contractor is excluded.

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20. Warranty / guarantee / notice of defects / damages

- 20.1 Contractor guarantees contract-compliant and complete delivery and service free from defects, especially in regard to the usually expected and potentially guaranteed characteristics or any such included in public statements or in samples or templates, as well as compliance of the deliveries and services with all statutory and public regulations applicable at the destination or on the sales market for the deliveries and services as stated by Ordering Party. Contractor shall be liable for no defect occurring during the warranty or guarantee period, irrespective of whether the defect was already present at delivery.
- 20.2 Contractor shall verifiably inform Ordering Party of the risks that can be usually expected in regard to the deliveries and services. Contractor shall be liable in the same manner for the deliveries and services provided by them as for the parts of the deliveries and services provided by their subcontractors.
- 20.3 Only the weights or quantities or other units of measurement set out in the order determined upon acceptance of the service or delivery shall be decisive, irrespective of any previous weighing or counting. Deviations (losses) of weight, number of quantities or units shall be considered a defect.
- 20.4 Ordering Party shall not be obliged to inspect the delivery or service and to report any defects. Application of sections 377 (report of defects) and 378 (reporting obligations in case of incorrect delivery or incorrect quantities) of the *UGB* (Austrian Commercial Code) is hereby expressly waived.
- 20.5 Ordering Party shall have the right to report defects that are obvious without testing of the delivery or service within 14 calendar days of acceptance of the delivery or service.
- 20.6 In case of defects that are only determined during use as intended or upon utilisation of the delivery or service, Ordering Party shall have the right to report such damages within 30 calendar days after discovery in full.
- 20.7 If the agreed or usually expected characteristics of the goods are not met, the purchaser shall have the right, at their choice, to withdraw from the contract without setting a time limit, to demand a reduction of the purchase price or delivery free from defects within a newly set time limit. Furthermore, Contractor is obliged to have any defective deliveries rejected by Ordering Party collected at own costs within 7 calendar days of the date of the rejection declaration; otherwise, Ordering Party shall arrange the return of the defective deliveries at the costs of Contractor.
- 20.8 The contractual guarantee or warranty period shall be at least 24 months after acceptance of the delivery or service. Any statutory time limits for damages shall remain unaffected.

21. Financial retention

- 21.1 In case of a financial retention of no more than 10 % of the total order value having been agreed in the order, Ordering Party shall have the right to retain this amount as non-interest-bearing security for warranty and guarantee claims for a period of 30 days beyond the contractually agreed warranty or guarantee period. This agreement shall also apply in case of insolvency of Contractor.
- 21.2 Contractor, however, is given the contractual option to replace the financial retention with submission of an irrevocable, abstract bank guarantee issued by a bank acceptable for Ordering Party at Contractor's costs that is payable upon first request and has a term of 30 days beyond the contractually agreed warranty or guarantee period.

22. Time of fulfilment

- The delivery and service shall be provided on the fixed date agreed in the order. Delivery periods shall commence on the order date. Decisive for compliance with the delivery date and delivery period is receipt of the delivery at the destination of delivery or use as specified by Ordering Party or the timeliness of successful acceptance. Deliveries and services provided belatedly are always accepted subject to reservation of all claims.

23. Contractual penalty / fixed-sum damages

- 23.1 If contractual penalties were agreed for cases under the order contract, e.g. contractual penalties for delay of deliveries (including documentation), contractual penalties for non-compliance with contractually agreed performance parameters (availability, facility performance, etc.) or similar, (e.g. negotiation record, written order, etc.), Ordering Party shall, if a claim was proven, have the right to assert this claim until payment of the (final) invoice for the deliveries or services that did not comply with the order, without Ordering Party having to reserve this right when accepting the scope of delivery and performance.
- 23.2 Unless set out otherwise in the negotiation record or in the written order, the following general regulation shall apply:
- If the supplier violates their contractual obligations, and therefore the provisions of the T&C for purchase, Ordering Party shall have the right to charge a contractual penalty of up to 10 % of the invoice amount for the goods in question as contractual penalty.
 - The assertion of any damage exceeding this amount is not excluded.
 - If the Contractor does not comply with agreed or defined contractual penalty events, they shall pay the contractually agreed contractual penalties for these. If amendments to the contractually agreed contractual penalty events were agreed between Ordering Party and Contractor in writing between the time of legally binding placement of the order until, where applicable, end of the contract term, also the newly agreed contractual penalty events shall be deemed as giving rise to a contractual penalty.
 - The obligation to pay a contractual penalty shall be created for Contractor upon occurrence of the contractually defined event.
 - The payment of contractual penalties shall not free Contractor from their performance obligations and any resulting liability.
 - For contractual penalties of whatever kind the Ordering Party and Contractor waive the judicial moderation law.

24. Cancellation (breach of contract)

- 24.1 In case of any delay of deliveries and services on the part of Contractor (including their subcontractors), also if they are not at fault, Ordering Party shall have the unrestricted right to withdraw from a part of or the entire contract after having set a one-off reasonable (as judged

by Client) grace period in writing. Contractor shall be liable for all damage or any form of direct additional costs caused by non-compliant contract execution (e.g. delay of delivery, including documentation, non-achievement of guaranteed characteristics or performance and similar).

- 24.2 No claims of whatever kind against Ordering Party shall arise for Contractor from any such withdrawal.

25. Written form

- 25.1 Amendments and supplements to the contract must always be made in writing.
- 25.2 The written form requirement shall also apply to any mutual waiver of the written form.

26. Security clause for assembly services

If assembly services are requested as part of the order, the assembly of the scope of delivery and service has to be performed subject to applicable statutory provisions (including CE conformity and standards) at the contractual destination under compliance with corresponding safety provisions (worker protection) and accident prevention regulations. With this commitment, Contractor assumes the responsibility for the security of their personnel (including any external personnel commissioned by Contractor, where applicable) for the duration of their assembly work.

27. Severability clause

If individual provisions of these T&C for purchase are invalid, either in part or as a whole, this shall not affect the validity of the remaining provisions. In such event, Contractor and Ordering Party are obliged to replace the void provision with that provision that comes closest to the economic purpose of that provision.

28. Applicable law and place of jurisdiction

- 28.1 Applicable law is material Austrian law under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and conflict of law provisions of international private law.
- 28.2 If Contractor has their seat within the European Community or in a country with which an enforcement agreement for decisions under civil law was concluded, agreed as exclusive place of jurisdiction for all disputes resulting from or associated with the present contractual relationship is the court with subject-matter jurisdiction at the place of business of Ordering Party.
- 28.3 If Contractor has their seat outwith the European Community or in a country with which no enforcement agreement for decisions under civil law was concluded, all disputes resulting from the present contract or associated with any violation, cancellation or invalidity thereof, shall be resolved in a final manner subject to the arbitration and mediation regulations of the International Arbitration Court of the Austrian Economic Chamber in Vienna (Vienna Rules), with three arbitrators having to be appointed in accordance with the respective regulations. The seat of the arbitration court is Vienna, the arbitration proceedings shall be held in German.
- 28.4 Ordering Party may, irrespective of the seat of Contractor, choose between proceedings before ordinary courts and the arbitration proceedings.

29. Personnel

Contractor shall ensure that all statutory provisions in regard to employment are met, in particular registration with social insurance, compliance with applicable worker protection regulations and the Employment of Foreign Nationals Act. This applies in particular also to the personnel of any subcontractors or any external personnel used.

30. Code of conduct

We comply with internationally recognised environmental, work and social standards. We have described and regulated these in the AGRANA Code of Conduct: <http://www.agrana.com/agrana-gruppe/gesellschaftlicheverantwortung/> /We expect Contractor to acknowledge and comply with this Code of Conduct in the same manner.

31. Privacy policy

AGRANA attaches special importance to compliance with the GDPR [General Data Protection Regulation] and all applicable data protection laws. The same is expected from contractual partners. The AGRANA privacy policy can be accessed under the following link: <https://www.agrana.com/datenschutz/>.
On request, a copy can be made available.

AGRANA has introduced an energy management system according to DIN EN ISO 50001.

In the procurement of products, services and equipment that affect or may affect the fundamental consumption of energy, the assessment of procurement is in part based on the energy-related performance (consumption and use of energy, energy efficiency).