

# General Terms and Conditions of Contract

for the purchase of systems, equipment and components

Version: 02/2017



## 1. Area of Application

For all - also future - inquiries, orders, purchases as well as other legal transactions and services of the TGW Group, the following General Terms and Conditions of Purchase shall be applicable. The contractor shall expressly acknowledge that TGW already now objects to all deviating regulations in a confirmation of order or in any other commercial document of the contractor. Deviating terms and conditions of the contractor and agreements which deviate from the present Terms and Conditions of Purchase shall only become valid upon express written agreement. Acceptance of deliveries and services or their payment does not constitute consent to the contractor's general terms and conditions.

The present Terms and Conditions of Purchase shall be applicable as framework agreements also for any further legal transactions with the contractor. In case an e-commerce agreement exists, these General Terms and Conditions of Purchase shall be supplemental to the e-commerce agreement.

In the event of conflicts among the contractual basis, the following order shall apply:

- special agreements (e.g. Framework Contract delivery contract, quality assurance agreement, etc.), provided that they were acknowledged by TGW in writing
- the present Terms and Conditions of Purchase
- non-mandatory provisions of commercial and civil law

## 2. Quote, purchase order, contract

Quote: The contractor shall exactly adhere in his quote to the details specified in our tender/enquiry in terms of quantity and condition of the goods to be delivered and notify us in writing of possible deviations beforehand. If the contractor fails to provide this written notification, he will not be entitled to claim a higher payment in case of such deviations. The contractor will immediately check invitations to tender and TGW purchase orders for apparent errors, ambiguities, incompleteness as well as inappropriateness of the specifications chosen by TGW for the intended use, and point them out to TGW. All quotes of the contractor shall be binding and free of charge. Compensation for visits and other pre-contractual services shall not be granted, unless a compensation has been agreed in writing or is legally required.

Purchase order, contract: Only written orders (also including orders via fax and e-mail) shall be valid. Agreements made by word of mouth or telephone require written confirmation to be binding for TGW. Deviations from the purchase order in the contractor's confirmation of the order shall not take any effect. Our purchase order shall be binding for two weeks.

- 2.1. TGW may request reasonable changes in construction and design of the delivery item. The effects regarding possible cost additions or reductions will have to be adequately and mutually settled.
- 2.2. Delivery schedules based on a framework order or delivery planning shall become binding, if the contractor fails to reject to them within two workdays following their receipt, unless otherwise regulated in a possibly concluded e-commerce agreement.

## 3. Contractor obligations

- Written notification of the contractor's responsible contact persons
- Compliance with the laws and regulations applicable on the respective construction site, in particular with respect to national technical standards, taxes, permits, duties, registrations etc.
- Compliance with a professional standard of care, as the contractor's supplies and services are destined to become part of the overall system to be installed by TGW or of an existing system
- Provision and consideration of any information which determines and may influence the system, environmental and procedural conditions of the contractor's supplies and services, especially with respect to interfaces. An on-site inspection of the respective installation may be carried out after consultation with TGW. The contractor will specify his interfaces in the respective requirements specification.

- Compliance with the relevant quality management and environmental management standards by presenting current certificates of himself and his subcontractors as proof. TGW reserves the right to audit the quality and environmental management system of the contractor and his subcontractors at agreed dates for conformity to standards and to demand corrective and preventive measures if required.
- In case the contractor performs his services in countries with minimum wage requirements, he shall be obliged to comply with these requirements. The contractor shall guarantee the continuous and timely payment of the minimum wage. In case the contractor uses a subcontractor to fulfil his contractual obligations, he shall be obliged to pledge the subcontractor to comply with the minimum wage requirements as well. The contractor shall exempt TGW, upon first request, from any claims, monetary fines, penalties and costs which may result from claims being made against TGW with respect to the relevant requirements.

## 4. Prices

The agreed price includes all deliveries, services, documentation and financing costs to be provided in accordance with the agreed conditions etc. These particularly comprise all costs for packaging, customs, insurance and other transportation costs or shipping expenses including the costs for a transport permit. The prices are fixed all-inclusive prices which may not be increased for any reason whatsoever.

For approved order extensions and additions the same terms and conditions and price reductions as for the main order will apply.

## 5. Invoicing and payment

Invoices must comply with the legal regulations, in particular with the Value Added Tax Act and other separately made agreements; invoices must in any case include the complete purchase order number and the order/contract date. The contractor shall be liable for any additional or consequential costs caused by incorrect or incomplete invoicing.

The periods allowed for payment shall depend on the respectively agreed payment plan. Payment does not constitute recognition of the orderly performance of the delivery nor a waiver of claims of any kind. The contractor shall not be permitted to assign claims made against TGW to third parties, unless TGW consents to the assignment in writing.

If the contractor fails to perform a delivery or service as provided in the contract, TGW will be entitled to retain the corresponding payment until it has been performed according to contract. TGW shall be entitled to set off due payments against counter claims from the respective business case and from other business cases of TGW.

The last payment will not be released until transmission of a total final invoice at the agreed terms and after fulfilment of all agreed conditions.

## 6. Change Request procedure

If services outside the agreed scope of supply and services of the contractor arise during the performance of the contract, the contractor will have to give written notice to TGW in advance of possible additional charges. Any changes and/or events having an influence on the scope of supply and services shall be made known to TGW in good time for a decision to be taken on them listing the causes, the effects and the necessary measures. This means that any changes which may be relevant in terms of costs, the contract and/or the schedule shall in all cases require the written consent of TGW and may only be recognised when these facts are presented.

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## 7. Delivery

Any delivery shall be made in accordance with Incoterms® 2010: DDP, place at delivery of the address specified in the purchase order, including unloading of the goods. The property in the scope of supply and services shall pass to TGW when delivered.

## 8. Schedule

All delivery periods and dates shall be binding according to schedule. Acceptance of delayed deliveries shall always be effected under reserve of all claims of TGW. Partial deliveries or deliveries ahead of schedule require a prior written shipping approval by TGW. Early deliveries shall not oblige to early payments. In the event of early deliveries TGW reserves the contractor's debit including all related costs (warehouse rent etc.). The receipt of the goods at the receiving office or point of use specified by TGW or the timeliness of successful acceptance shall be decisive for the compliance with the date of delivery or the term of delivery. The acceptance of delayed deliveries shall always be made under the reservation of any possible claims. Deadline shifts on the part of TGW shall be free of charge. Furthermore, TGW shall be entitled to interrupt the respective contractual relationship at its sole discretion at any time and without giving reasons. The dates and deadlines shall in such a case be adapted accordingly. The contractor will take any necessary measures which enable resumption of work as fast as possible after it has been released again by TGW. In such a case, the contractor will immediately notify TGW of the corresponding consequences and the resulting direct costs actually incurred by them. The additional direct costs resulting from the suspension will have to be proven by the contractor and be borne by TGW. Claims extending beyond that, on whatever legal ground, shall be excluded.

The contractor shall only be entitled to plead absence of necessary documents to be provided by TGW, if he demanded their submittal in writing and did not receive them within a reasonable period of time; in this case no delay in delivery will occur as long as TGW fails to submit the required documents. The burden of proof thereof shall rest with the contractor. TGW shall have the right to use the software belonging to the scope of supply of the product, including its documentation, to the legally permitted extent. Furthermore, TGW shall have the right to use such software - including documentation - with the agreed performance characteristics and to the extent required to use the product according to contract. The creation of a back-up copy shall be permitted also without express consent. The same shall apply for the use of industrial property rights existing in connection with the product.

In the event of changes to the agreed delivery dates that are not caused by the contractor, the contractor shall agree to properly store the goods on behalf of TGW for a period of up to three months at the expense and risk of the contractor. The parties may enter into separate arrangements regarding the payment for such goods against a declaration of transfer of ownership and/or bank guarantee etc..

## 9. Liquidated damages

Unless otherwise agreed to the contrary, all agreed dates and deadlines are subject to the following contractual penalty:

1% of the order value per week of delay or part thereof, to a maximum of 10% of the order value. TGW shall be entitled to retain an amount corresponding to the contractual penalty of the overall price agreed by contract. Furthermore, TGW shall be at liberty to withdraw from the contract if the contractor is at fault. No rights of any kind shall be due to the contractor against TGW in the event of a such withdrawal of contract. Other claims for compensation of all damages caused by the delay and adverse effects of whatsoever kind that go beyond the contractual penalty shall remain unaffected. Contractual penalties for non-fulfilment of assured properties/performances/performance data may be defined in the technical specifications or annexe.

Reservation of contractual penalty already at the moment of acceptance is not necessary, it may rather be claimed until the final

payment is made, in particular the penalty may be deducted from the final invoice. Contractual penalties for intermediate deadlines may be deducted from partial payments.

## 10. Shipping

Every shipment must include a delivery note. The contractor shall be liable for any damage, expenses, demurrage etc. arising from the non-compliance with this provision. The delivery will not be accepted without the corresponding shipping documents, but deferred at the contractor's cost and risk. Shipments have to be packed properly for the means of transportation used, in particular observing TGW's shipping instructions. If the contractor fails to observe these instructions, he shall bear all related costs.

Partial deliveries shall only be permitted upon TGW's prior written consent, otherwise TGW shall have the right to refuse acceptance. In any case, partial deliveries shall not be deemed as independent transactions and must be identified as such indicating the total quantity and the quantity of the respective partial delivery.

## 11. Contract documentation

The contractor must not use any of the specifications, drawings and other technical documents, which have been provided by TGW to the contractor for the production of the delivery item or which the contractor has produced according to TGW's special specifications, for any purpose other than the production according to the respective order, nor copy them or make them available to third parties. The above-mentioned documents shall remain the exclusive property of TGW and on request shall be returned to TGW together with any extracts or copies made. The processing of materials and the assembly of parts shall be done for TGW. TGW shall become co-proprietor of the products manufactured by using materials and parts, stored by the contractor in this respect for TGW, at the ratio of the value of the supplies to the value of the total product. If the contractor does not, for whatever reason, get to deliver the goods, he will have to immediately return all documents without being asked to do so, or to archive them ensuring not to use them further inappropriately. The orders and all work relating to them shall be regarded as business secrets and are to be treated with confidentiality. The contractor shall be liable for any damages caused to TGW by an infringement of these obligations. The contractor shall only be allowed to indicate the existing business relationship or refer to it in advertising material and publications of whatsoever kind upon prior written approval by TGW.

## 12. Liability

The contractor and TGW shall be liable in accordance with the legal requirements; a liability for loss of profit shall however be excluded.

## 13. Retention money guarantee

Unless otherwise agreed to the contrary for individual projects, payments are subject to retention of 10 % of the total amount (retention with final invoice) and may be covered by an abstract bank guarantee to the amount of 10 % of the total order value plus statutory value added tax with a term of 2 months beyond the warranty period. The retention money will be withheld during the entire warranty period.

## 14. Completeness clause

The contractor's scope of supply and services including documentation comprises all parts and services customary within the industry or belonging to the delivery in the context of the purchase order, even if they are not expressly listed in detail. Completeness in particular includes that the purchased components are suitable for the intended purpose and are fully functional under the conditions and influences that can be reasonably expected at the location of installation and when operated in compliance with the safety instructions, applicable standards and official regulations.

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## 15. Transfer of risk

Deviating from possibly used Incoterms® 2010, the transfer of risk to TGW shall be issued upon the acceptance of the system by the end customer.

## 16. Documentation

With respect to the purchase order, the documentation includes all written documents, drawings and electronically produced and stored files (incl. source code and production drawings) specified in the order and required for the proper and timely completion of all activities in connection with the installation and operation of a system component.

The documentation must be submitted in electronic form and conform to the scope defined in the purchase order documents, including annexes.

In the event of changes in the order, all affected technical documents as well as the documentation must immediately be updated accordingly by the contractor, so that a final corrected documentation is guaranteed.

In case CE marking is required for the deliveries and services, it must clearly and demonstrably comply with all relevant legal requirements (in particular the CE directive) and all standards in the latest valid version.

The contractor must provide any valid preference certificate (certificate of origin etc.) free of charge of the goods in international traffic.

## 17. Acceptance

Acceptance of the services shall be effected in connection with the final acceptance by the end customer. An exact definition of the acceptance procedure will be prepared together in writing during creation of the functional specification based on the product requirements specification. The contractor must in any case prove all data, performance rates and functions specified in the quote and annexes to the contract during the acceptance process, which has to be recorded in an acceptance protocol.

Basically, acceptance may only be effected after having fulfilled the following conditions:

- performance of all deliveries and services by the contractor according to the purchase order;
- proper and complete delivery of all documents;
- presentation of a protocol signed by both parties, giving proof of a successful completion of trial operation including certificate of performance for the overall system.

In case defects are detected which do not have an influence on the system's functionality, acceptance may be effected under the reserve of immediate correction of these defects. If the pending points are not fulfilled within the given period of time, the confirmation of acceptance shall be deemed as not given with retroactive effect.

If during the acceptance the system appears not to have been manufactured according to contract, and/or the required performance has not been achieved, the contractor will have to solicit a repetition of the acceptance procedure within a period of grace to be agreed upon. In case the performance agreed by contract is again not achieved during the repeated acceptance, in particular the guaranteed performance data are not proven, the contract shall be deemed as not fulfilled.

## 18. Warranty

The contractor guarantees that the deliveries/services have been designed/performed fully and in accordance with the order specifications or delivery schedule and that the goods are suitable for the intended use; he also guarantees that the design, suitability, manufacturing methods as well as the guaranteed properties conform to the latest state of the art, have been manufactured in compliance with all applicable regulations and contain only new material of suitable and top-class quality and that the ordered item is free of defects. Furthermore, the contractor guarantees to achieve and reliably meet all performance values agreed by contract. The contractor has to demonstrably advise TGW of all

risks which may typically be expected during the use of the product. The contractor shall be liable in a corresponding manner for goods and components that have been delivered but not produced by him and/or for services rendered by him.

Unless otherwise agreed to the contrary, the warranty period shall end 24 months after final acceptance of the overall system and correction of all defects, irrespective of the period of operation. Warranty shall include material, personnel and any other costs. In case of a hidden defect the warranty period shall start to be effective at the moment the defect is identifiable objectively. For goods which are usually kept in their packaging until they are used, defects which do not become visible until the goods are retrieved from their packaging shall be considered as hidden defects.

TGW shall not be obliged to inspect the goods and notify of possible defects (including quality defects), Nevertheless, the supplier is not exempted from any further liability (same comments agreed on T&C)

TGW shall at its own option be entitled to request at short notice from the contractor to remedy all defects detected during the agreed period of warranty at his expense and risk by correction (repair, provision of missing components) and/or replacement, or to claim reduction of price, or demand redhibitory action, or correct the defects and perform not provided or defective services itself or have them corrected and performed by third parties at the expense and risk of the contractor in case of effectless reprimand or imminent danger.

In the event of a claim being made against the title of warranty, the burden of proof shall rest with the contractor during the entire warranty period, to prove that a defect did not exist at the moment of handover.

In case of defects of whatsoever kind, TGW shall in any case be entitled to retain the total outstanding purchase price or works compensation until full correction of defects.

In case of a rectification or replacement of defective parts the warranty period for the respective part shall start again upon successful resumption of operation. Any interruption of operation caused by the contractor within the warranty period will lead to an according extension of time.

## 19. Hold-harmless clause

The contractor undertakes to ensure that all insurance and taxation requirements applicable in the state of the construction site as well as all labour law regulations related to the employees working on the site are met and has to fully hold harmless and indemnify TGW in this respect.

## 20. Product liability

The contractor has to enclose operating instructions and warning notices written in French and/or English language in his delivery and, as far as this is possible and reasonable, attach them to the delivered goods himself. If the delivered goods turn out to be defective after acceptance of delivery and/or TGW detects that the properties of the product do no longer conform to the state of the art of science and technology, the contractor shall be obliged to take such goods back and refund the complete purchase price.

If claims are made against TGW due to its product being defective or in particular having violated any official safety regulations, or due to national or foreign product liability provisions, TGW will be entitled to demand compensation for this damage from the contractor, as far as this damage is attributable to the products he delivered. The contractor shall commit to fully exempt TGW from any resulting claims. This damage shall also include costs of replacement as well as costs of a preventive and required product recall.

If claims are made against TGW due to services performed by the contractor, the contractor shall be obliged to immediately deliver any of the means of evidence requested by TGW at his own cost, such as in particular quality and inspection protocols, certificates and so forth.

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## 21. Industrial/Intellectual property rights

The contractor asserts that his scope of supply and services as well as the documentation and drawings provided by him does not infringe any property rights (patent, trademark or sample rights, copyrights, equipment, product names, know-how, territorial protection and rights of a similar kind, in fact even if their granting has been applied for as needed). The contractor shall be liable for all losses resulting from a breach of this provision as well as fully indemnify and hold TGW harmless from and against all third-party claims.

Without prejudice to further rights, TGW shall in such case be entitled to refuse acceptance of the goods, to place already accepted goods at the contractor's disposal again at his own cost and to retain payment of the total purchase price until the entitlement to the claims made has been clarified.

## 22. Non-solicitation agreement

The contractor shall not be allowed to solicit employees away of TGW, or to offer them a job directly or indirectly without prior written consent (both cases hereinafter referred to as "solicitation").

If the supplier infringes this provision, he will have to pay a penalty which corresponds to the respective annual gross the solicited employee received from TGW in the last year of employment; in case of a shorter term of contract, the annual gross pay is projected to a year.

## 23. Insurance

The contractor undertakes to maintain a public liability insurance with sufficient coverage during the order execution including the duration of the warranty periods. The contractor shall provide a corresponding confirmation of insurance coverage to TGW prior to conclusion of the contract without being requested.

## 24. Force majeure

Force majeure and industrial conflicts shall exempt the contracting parties from the duties to indemnify for the duration of interruption and to the extent of its effect. The contracting parties shall be obliged to immediately provide the required information as far as reasonable, and to adapt their duties to the changed circumstances in good faith. In case a circumstance extends over a period of more than two months, and the parties are not able to reach a mutual solution, both parties shall have the right to withdraw from the contract in full or in part.

## 25. Withdrawal from contract

If the contractor fails to comply with his contractual obligations in full or in part (e.g. also including delay in intermediate deadlines of the planning and manufacturing process as well as dependant ancillary services), TGW will be entitled to withdraw from the contract in full or in part after having granted a reasonable period of grace without success and independent of a possible divisibility of the service. With regard to possible periods of grace, actually granting such a period, e.g. through repeated reminders to comply with the contract by TGW, shall be sufficient. In particular in the case of non-fulfilment of assured properties TGW will have the right, independent of a divisibility of the services, to fully withdraw from the contract. This shall in equal measure be applicable in case of a considerable aggravation of the contractor's financial status. The amounts already paid for the services affected by the withdrawal from contract plus the financing costs incurred for TGW have to be paid back immediately. No rights of any kind shall be due to the contractor himself against TGW in the event of a such withdrawal of contract. The contractor shall be obliged to immediately report circumstances of this nature to TGW.

## 26. Cancellation

TGW shall have the right to withdraw from the contract at any time in full or in part, even if the contractor is not at fault.

In such a case, TGW will be obliged to reimburse the contractor for the contract price in proportion to the already provided deliveries or performed services and, in addition, make up for the proved direct

costs incurred for deliveries and services which are already in process or for the cancellation of sub-contracts. The contractor shall transfer the property of the respective deliveries/services upon their payment; the burden of proof for the existence of the aforementioned costs shall rest with the contractor. The contractor will make every possible and reasonable effort, upon declaration of cancellation, to keep the direct costs to be made up for by TGW to a minimum.

## 27. Amendment to contract

Possible contractual amendments or adjustments shall be made in writing to be valid. The same applies to a possible waiver of the written form requirement.

## 28. Cessions / sub-contracting

In the event of the existence of material circumstances, such as for example the relocation of the production site, TGW shall be entitled to prohibit the cession of the order with immediate effect and to demand performance according to contract from the contractor.

## 29. Confidentiality

The contractor may have access to certain proprietary and confidential information of TGW or its customers. Therefore, the contractor shall agree to treat this information as confidential and use the information in question or disclose it to third parties exclusively for services within the framework of this agreement and not for any other reason. All already existing non-disclosure agreements between TGW and the contractor shall still remain fully valid. The contractor agrees to indemnify TGW for any damages or costs caused by a breach of his duty to maintain confidentiality.

## 30. Data protection

TGW points out that the contractor's data will be electronically saved and only used for the purpose of the contract.

## 31. Compliance

The contractor shall commit to comply with the Code of Conduct. This Code of Conduct is an integrative part of the present Terms and Conditions of Purchase, and available on the website under [www.tgw-group.com](http://www.tgw-group.com).

## 32. Customs / export control

The contractor shall be obliged to inform TGW about any obligation to obtain a permit in case of re-exports of his goods in accordance with European, US exportation and customs regulations as well as the exportation and customs regulations of the country of origin of his goods in his business documents. Therefore, the contractor shall at least provide the necessary information as required according to the relevant customs and export regulations in his quotes, order confirmations and invoices for the affected items. The contractor shall be obliged upon TGW's request to communicate all further foreign trade details on his goods and their components to TGW in writing, and to immediately inform TGW (prior to the delivery of the affected goods) about all changes of the aforementioned details in writing.

## 33. Spare parts proposal

The contractor shall guarantee spare parts supplies at least for a period of 10 years. The price maintenance period of the spare parts proposal must not be less than 18 months. The contractor commits to inform TGW, at least 12 months in advance if any goods purchased by TGW is no longer produced.

## 34. Place of fulfilment, choice of law and jurisdiction

For all rights and obligations arising from the legal transactions made with TGW, the place of fulfilment for both parties shall be the respective construction site address, or, failing to name an address, the headquarters of TGW in Toulouse, France.

This agreement shall exclusively be subject to French substantive law. Conflict of laws of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG) shall expressly be excluded.

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The competent court in Toulouse, France, shall have jurisdiction for all disputes arising from or in the context of this contract.

But TGW shall be entitled at its own option to claim against the contractor at any other court which may be competent under national or international law.

## **35. Severability clause**

In the event that one or several of the provisions contained herein shall be held to be invalid, illegal or unenforceable, the contracting parties shall be obliged to agree another provision that comes as close as possible to the economic intent of the contract which the contracting parties originally wished to pursue with the invalid or unenforceable provision. This shall also apply for possible loopholes of the agreement. The invalidity, illegality or unenforceability of the respective provision(s) shall not affect any other provision of this contract.

## **36. Final provisions**

The titles of the provisions contained in the present General Terms and Conditions of Purchase shall only serve for better clarity and must not be used for interpretation.

No business development taking place between the contractor and TGW and no delay or default regarding the exercise of a right, legal remedy or means granted to TGW according to the present General Terms and Conditions of Purchase shall be deemed as waiver of these rights. Any of the rights and legal means granted in these TGW Terms and Conditions of Purchase or any of the legal remedies granted in these Terms and Conditions of Purchase shall be cumulative and exist coequally and additionally to other legally granted rights, legal remedies and means.

## **37. No-contact provision for directly contacting customer**

The supplier agrees not to contact the customer directly during the service life of the respective site handed over to the customer by TGW in relation to business activities in connection with these sites without the written consent of TGW, and shall refer any orders or enquiries received from the customer in connection with the sites to TGW. The supplier shall also procure that any member of its group shall similarly be bound and shall accept responsibility for any breach by such member of its group. The supplier shall indemnify TGW for all losses arising from any breach of this provision including without limitation loss of profits and loss of opportunity.