

1. Preamble

All orders placed by Gerätewerk Matrei e.Gen ("Buyer" or "GWM") are subject exclusively to these Terms and Conditions of Purchase, which are available at www.gwm.co.at. They form an integral part of the order for goods and/or services. The Supplier shall be bound by the Terms and Conditions of Purchase, including any supplements, addenda, specifications and other documents that form part of the order.

The Terms and Conditions of Purchase shall take precedence over all other documents expressly that are referred to in the order by GWM and that forming an integral part of the order, unless the sequence of the documents is otherwise expressly stipulated in the order. The Supplier's terms and conditions of sale shall not apply; any amendment to these Terms and Conditions must be made in writing.

2. Conclusion of contract

2.1. Offers, drafts, samples and specimens of the Supplier are free of charge for GWM. No remuneration shall be granted for visits or the preparation of offers, projects, etc., unless remuneration has been expressly agreed upon or there is a legal entitlement to such remuneration. Offers are binding for the Supplier and have a minimum validity period of 12 (twelve) weeks from the date of the offer.

2.2. Offers from the Supplier must always be based on the specifications provided by GWM and require a feasibility analysis prepared by the Supplier. If it turns out that the product cannot be manufactured according to the specification provided by GWM, the product can be offered differently in absolute exceptions. The submission of an alternative offer must be accompanied by clear and unambiguous labelling on the offer. The deviating features compared to the specification provided by GWM must be clearly emphasised and the basis of the offer must be presented as part of a target/actual comparison.

2.3. All orders are placed by GWM in writing. Amendments, supplements, verbally placed orders or subsidiary agreements shall only become binding upon written confirmation.

If the Supplier does not object to an order within 5 (five) working days of receipt, the contract shall be concluded on the basis of this order. GWM shall be entitled to cancel the order in writing within a period of five days without giving reasons, whereby the order shall be deemed not to have been placed.

2.4. The delivery time specified by GWM in the order is binding. Without prejudice to other legal consequences, the Supplier is obliged to inform GWM immediately in writing, stating the reasons and the expected delay, if it is foreseeable that agreed delivery times cannot be met. Partial deliveries or deliveries may only be made before the agreed delivery time with the prior written consent of GWM.

An overdelivery or underdelivery requires the timely notification of the Supplier and the express consent of the Buyer.

3. Prices and payments

3.1. All prices are binding fixed prices and are not subject to change. The Supplier's price shall include all taxes, fees and charges applicable to the goods or services.

All prices are to be broken down by the Supplier into goods, packaging and transport (including insurance), whereby the labelling of the goods or shipping unit and packaging must be carried out in accordance with the Buyer's specifications.

3.3. Unless otherwise agreed in writing, the prices quoted include packaging and unloaded at the Buyer's place of delivery.

3.4. GWM shall be entitled at any time to demand reasonable

changes to the design and execution of the delivery item without these changes resulting in a change to the purchase price.

Payments shall be made in accordance with the agreed terms of payment. Unless other terms of payment have been agreed in writing, payments shall be made within 14 days of proper receipt of the delivery and invoice (date of invoice receipt stamp) with a 3% discount or within 60 days net.

3.5. All documents, delivery notes and invoices of the Supplier must in any case contain the ERP order number and the article number of the Buyer. GWM shall be entitled to reject the Supplier's invoice if it does not contain the Buyer's order and article number or is otherwise incorrect. Any resulting delays in payment shall be borne by the Supplier. The charging of fees of any kind whatsoever to the Buyer is excluded, unless the Buyer has expressly agreed to such charging in writing.

3.6. Invoices must always be sent in digital form to the e-mail address 'Supplier.invoice@gwm.co.at'. Any legal regulations on the use of electronic formats must be observed in all cases.

4. Delivery and transfer of ownership

4.1. If the Supplier fails to deliver and/or perform the goods and/or services on time, the Buyer's rights, in particular to declare cancellation of the contract and to assert claims for damages, shall be determined in accordance with the statutory provisions. GWM shall be entitled to claim any amounts specified in the order as liquidated damages for the duration of the delay. The assertion of further claims for damages remains unaffected.

4.2. If no lump-sum compensation has been agreed, GWM shall be entitled to compensation for the entire damage incurred as a result of the Supplier's failure to perform on time.

4.3. Unless otherwise specified in the order, the following provisions shall apply: Shipments of goods from locations within the EU to locations within the EU are delivered DAP of the designated location, with the transfer of ownership taking place at the Buyer's loading point; Shipments of goods outside the EU (third countries) are delivered DDP of the designated place, with the transfer of ownership taking place at the Buyer's loading point.

4.4. In any case, the Supplier is obliged to inform GWM of the country of origin, including the movement number of all goods delivered in accordance with the order, as well as sufficient details to fulfil the provisions of any applicable agreements on trade or customs privileges.

4.5. Goods delivered to GWM before the due date may be returned to the Supplier at the Supplier's expense. Failure by the Supplier to comply with these specifications of the Buyer shall result in all resulting transport costs being borne by the Supplier and all other remedies available by law or in equity may be invoked. In addition, the Incoterms of the International Chamber of Commerce (ICC) shall apply in the version valid on the day the contract is concluded.

4.6. The transfer of ownership shall take place unconditionally by mutual agreement upon handover of the goods to GWM and without regard to the payment of the price. However, if GWM accepts an offer of the Supplier for transfer of ownership conditional on payment of the purchase price in individual cases, the Supplier's retention of title shall expire upon payment of the purchase price for the delivered goods at the latest. Any prolonged or extended retention of title by the Supplier is excluded.

4.7. Any processing, mixing or combination by the Supplier of items provided by GWM shall be carried out on behalf of GWM. It is agreed that

GWM shall become co-owner of the products manufactured using the provided items in the ratio of the value of the provided items to the value of the overall product, which shall be stored by the Supplier for GWM until the time of handover.

5. Property of the Buyer

5.1. Unless otherwise agreed in writing, all tangible and intangible goods – including, but not limited to, information or data of whatever nature, tools, materials, drawings, computer software, know-how, documents, equipment or materials – provided to the Supplier by the Buyer or paid for separately by the Buyer, as well as all replacements thereof and all materials attached or affixed to these goods, shall be or remain the property of the Buyer. The Supplier hereby grants GWM a free, non-exclusive, transferable, irrevocable, temporally and spatially unlimited right of use to all industrial property rights, insofar as the granting of the rights of use is necessary or even only suitable for the unrestricted use of goods and services and in particular their sale to third parties and their use by them.

5.2. The Supplier shall be entitled to use the goods owned by the Buyer exclusively for the fulfilment of the Buyer's order and may under no circumstances use them for other purposes, pass them on to third parties or reproduce them.

5.3. All rights to ideas, inventions, creations, strategies, plans, know-how and data arising in the course of or as a result of the Supplier's performance under the order, including all patent rights, copyrights, proprietary information rights, database rights, trade mark rights and other intellectual property rights, shall be the exclusive property of the Buyer. All such intellectual property that can be protected under intellectual property law shall be deemed to have been created on behalf of GWM or the Buyer shall be deemed to be the 'first owner' of the work in accordance with the intellectual property laws applicable at the place of creation.

5.4. GWM shall be entitled to inspect all relevant documents of the Supplier and to request the submission of all relevant certificates and documentation of the Supplier in order to verify compliance with this provision.

6. Rejection

6.1. If, prior to the expiry of the warranty period, any part of the services provided under the order is found to be defective or otherwise not in conformity with the requirements of the order (including the applicable drawings and specifications) – regardless of whether the defect or non-conformity is attributable to the Supplier or a direct or indirect Supplier of the Supplier – GWM shall be free, in addition to its rights under law or contract, including the right to claim damages, at its option and sole discretion and at the Supplier's expense, to

- a) cancel the order without such cancellation giving rise to any claims by the Supplier against the Buyer,
- b) reject and return the goods or services in question,
- c) take measures to remedy any defects and/or to ensure that the goods comply with all requirements.

6.2. All resulting reasonable costs and other expenses (including material, labour and handling costs and any necessary additional machining or other additional services, charges, etc.) shall be borne by the Supplier. GWM shall be entitled to withhold payment in whole or in part and/or to request the Supplier to immediately improve the defective part of the performance and/or to replace the non-conforming goods with goods conforming to the order.

7. Warranty

7.1. GWM shall be entitled to warranty claims without restriction even

if the defect remained unknown due to gross negligence. The commercial inspection and complaint obligations, in particular the statutory provisions according to Sections 377 et seq. of the Austrian Commercial Code (Unternehmensgesetzbuch (UGB)), are waived: GWM's duty to inspect is limited to defects that are clearly recognisable during the incoming goods inspection by GWM under external examination including the delivery documents (e.g., transport damage, incorrect and short delivery).

7.2. The warranty period begins with the inspection of the Buyer for delivery or service under 8.1 from the time of commissioning (acceptance by acceptance protocol) and is 24 months from commissioning, complete delivery or complete service. The Buyer shall immediately notify the Supplier in writing of any defects that have occurred. The warranty period shall also apply accordingly to claims arising from defects of title. Furthermore, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right against GWM – in particular in the absence of a limitation period.

7.3. The warranty applies to the Buyer, its legal successors and transferees and the users of the ordered goods and services. If goods or services prove to be defective within the warranty period, the Buyer shall be entitled, in addition to its rights under law, contract or equity, at its option and sole discretion, at the Supplier's expense to

- a) reject and return such goods and services,
- b) request the supplier to remove and transport any non-compliant goods and make a new delivery that meets all the requirements contained herein and/or
- c) take all necessary measures to cure any defects and/or ensure that the goods and services comply with all requirements contained herein.

7.4. All costs and other expenses incurred by the Buyer in this respect – including material, labour and handling costs, costs for the necessary additional machining or other additional services – shall be borne exclusively by the Supplier. The warranty period shall be extended by a further 24 months after the defect has been rectified.

8. Rule compliance

8.1. The Supplier is aware of the Supplier Code of Conduct drawn up by GWM and declares to comply with all relevant requirements.

The Supplier undertakes to comply with all statutory and collective agreement provisions relating to the minimum remuneration of employees and declares that it will not violate the provisions of the Wage and Social Dumping Prevention Act and internationally applicable minimum labour law standards, in particular all conventions of the International Labour Organization ('ILO') with regard to employee rights, working hours and occupational health and safety.

8.2. The Supplier is obliged to comply with the recognised rules of technology (in particular DIN standards, VDE regulations, VDI guidelines, DVGW regulations) and the statutory provisions on product safety (in particular the Austrian Product Safety Act) and declares to operate a standardised quality management procedure in accordance with the requirements of DIN EN ISO standard 9001 at minimum.

8.3. The Supplier is obliged to inform GWM in writing as early as possible before the delivery date about any authorisation requirements for its goods under applicable Austrian, European (EU), U.S. export, customs and foreign trade law, as well as the export, customs and foreign trade law of the country of origin of its goods.

If the Supplier violates its obligations according to the above provisions, it shall bear all expenses and damages, as well as other disadvantages (e.g.

additional claims for foreign import duties, fines), incurred by GWM as a result.

9. Delay

9.1. In the event of delays of a duration of not more than one week that are not the fault (intent or negligence) of the Supplier and/or its Suppliers, GWM shall be entitled to cancel the order in whole or in part by written notice of the delay if

- a) the Supplier fails to fulfil within the specified period or an extension granted in writing by the Buyer,
- b) the progress made by the Supplier is so inadequate that, at the Buyer's discretion, the fulfilment of the order is jeopardised, or
- c) the Supplier fails to fulfil any condition of the order.

9.2. Such cancellation shall become effective if the Supplier fails to remedy the relevant default within a reasonable grace period set once by the Buyer.

9.3 In the event of cancellation, the Buyer shall be entitled to procure a replacement on reasonable terms at the Supplier's expense.

In any event, the Supplier shall be liable for all costs, expenses and damages arising from any failure in the Supplier's performance, regardless of whether the Buyer cancels or extends delivery periods.

If, for any reason, the Supplier anticipates difficulties in meeting the required delivery date or any other requirement of the order, the Supplier shall notify the Buyer in writing without delay.

10. Insolvency

If the Supplier ceases to conduct its ordinary course of business or fails to fulfil its obligations when due, the Buyer shall be entitled to terminate the order immediately without incurring any liability to the extent permitted by applicable law. The same shall apply in the event of the opening of insolvency proceedings against the assets of the Supplier or the rejection of such proceedings due to a lack of cost-covering assets. This stipulation does not apply to goods or services that are provided, delivered and accepted in full within a reasonable period of time after cancellation and are to be paid for by the Buyer at the order price.

11. Indemnification and insurance/product liability

11.1. It is expressly agreed that the Supplier shall compensate the Buyer within the scope of the statutory provisions for personal injury, damage to goods that are not the subject of the contract, other damage and loss of profit, provided that it is clear from the circumstances of the individual case that the Supplier is at fault (even if only slightly at fault).

11.2. The Supplier must ensure adequate insurance cover for the risks described above.

11.3. In the event that claims are asserted against GWM on the basis of product liability, the Supplier shall be obliged to indemnify GWM against such claims insofar as the damage was caused by a defect in the goods delivered by the Supplier. In cases of fault-based liability, however, this stipulation shall only apply if the Supplier is at fault. If the cause of the damage lies within the Supplier's area of responsibility, the Supplier must prove that it is not at fault.

11.4. Within the scope of its obligation to indemnify, the Supplier shall assume all costs and expenses arising from or in connection with claims asserted by third parties, including recall actions carried out by GWM. Prior to a recall action, GWM shall inform the Supplier, enable it to cooperate sufficiently and exchange information with it on an efficient implementation; such a procedure is not necessary if the information or participation of the Supplier is not possible due to particular urgency.

11.5. Furthermore, the Supplier shall also be liable for damages

incurred by GWM as a result of reasonable precautionary measures to protect against a claim arising from non-contractual liability which are largely attributable to the Supplier (e.g. public advertising measures).

11.6. Further legal claims remain unaffected.

11.7. The Supplier must always maintain sufficient product liability insurance at its own expense with cover for personal injury and property damage of at least EUR 5 million per case. Removal/installation costs and recalls must be covered by the insurance. If a Supplier delivers automotive parts, a product liability insurance policy with cover for personal injury and property damage of at least EUR 10 million per case must be maintained. Removal/installation costs and recalls must also be covered by the insurance. Upon request, the Supplier shall provide GWM with evidence of the conclusion and existence of the product liability insurance.

12. Special recourse

12.1. GWM is entitled to the statutory rights of recourse within a supply chain in accordance with Section 933b of the Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch (ABGB)) (in implementation of the Consumer Goods Directive) in addition to the warranty claims without restriction. GWM shall be entitled, in particular and irrespective of the 5-year period provided for in Section 933b (2) ABGB, which is waived by mutual agreement, to demand exactly the type of subsequent fulfilment (rectification or replacement delivery) from the Supplier that GWM owes or has provided to its customer in the individual case.

12.2. Before GWM recognises or fulfils a warranty claim asserted by its customer, GWM shall notify the Supplier and request a written statement, briefly explaining the facts of the case. If the statement is not made within a reasonable period of time and no amicable solution is reached, the warranty claim actually granted or fulfilled by GWM shall be deemed to be owed to its customer; in this case, the Supplier shall be responsible for providing evidence to the contrary. The period of 2 months provided for in Section 933b (2) ABGB from fulfilment of the warranty obligation for the judicial assertion of claims pursuant to Section 933b (1) ABGB shall be extended to 6 months by mutual agreement.

12.3. GWM's claims under paragraph 1 shall also apply if the goods have been further processed by GWM or by a customer of GWM prior to their sale to a consumer, e.g. by installation.

13. Assignment and subcontracting

13.1. The Supplier shall only be entitled to assign (including assignment due to a change of ownership or a change in the ownership structure) the order or related rights, including payment claims, with the prior written consent of the Buyer.

13.2. The Supplier shall inform GWM in good time in writing of any changes to manufacturing processes, changes to materials or vendor parts for products or services, and of any changes to procedures or equipment for testing parts or other quality assurance measures. GWM is entitled to check to the extent necessary whether the changes could have a detrimental effect on the product. Upon request, the Supplier shall provide the necessary documents and facilitate audits to the extent required.

14. Confidential or proprietary information and publication

14.1. The Supplier is obliged to treat as confidential all technical, process-related, proprietary or commercial information arising from the data provided by the Buyer in connection with the order. Any kind of disclosure of such information is only permitted with the express written consent of the Buyer. The same applies to publications in the press, photographs and all related information.

14.2. The Supplier is obliged to return all information provided by the Buyer – whether in the form of data carriers, drawings, specifications, photographs and the like – to the Buyer immediately after completion of the order.

14.3. The obligation to treat all information received confidentially shall remain with the Supplier for an unlimited period of time and without restriction, irrespective of the complete fulfilment of the order.

15. Intellectual property

The Supplier shall defend, indemnify and hold Buyer harmless from and against any and all costs and expenses incurred in connection with any claim, suit or other proceeding brought against Buyer or its customers based on an alleged infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party by any article or equipment or any part thereof.

16. Applicable law

These Terms and Conditions of Purchase and all legal relationships between GWM and the Supplier shall be governed by Austrian law with the exception of (a) the conflict of law rules of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation), (b) the national conflict of law rules and (c) the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

17. Jurisdiction

All disputes arising from the contractual relationship between GWM and the Supplier, including all disputes concerning the conclusion, validity or existence of a contract, the inclusion or effectiveness of these Terms and Conditions of Purchase, as well as those concerning the consequences of the termination of the contract or the termination of the business relationship, shall be decided exclusively by the competent court in Innsbruck.

18. General provisions

18.1. Insofar as personal designations are only used in the masculine form in these Terms and Conditions of Purchase, they refer to women and men in the same way. When applying the term to specific persons, the respective gender-specific form must be used.

18.2. Unless otherwise agreed, communication shall be in German or English without exception. All documents, such as certificates, certificates, drawings and initial sample test reports must be made available by the Supplier in German or English at the latest on request.

18.3. If any provision of these Terms and Conditions of Purchase is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of any other provision of these Terms and Conditions of Purchase shall not be affected. The unlawful, invalid or unenforceable provision shall be replaced by a lawful, valid and enforceable provision that comes closest to the economic purpose of the replaced provision.