

# General Conditions of Procurement and Ordering (GCP) of BBG Baugeräte GmbH

The following conditions of procurement and ordering apply exclusively to our orders. The acceptance of orders is to be regarded as being an acceptance of our conditions of purchasing. This, in turn, annuls any general standard terms and conditions (GSTC) contained in the supplier's offer sheet or order confirmation and applying to the execution of this order. This also applies to cases in which these conditions are not expressly refuted by us. Conditions of sale and supply issued by the supplier represent a commitment to us only in cases and to the extent that they are recognized in writing by us. This applies only to each individual transaction.

## 1) Essential conditions

The legal relationships between supplier and ordering party are governed exclusively by the following conditions of procurement. Any contradictory conditions are hereby expressly refuted. These conditions of procurement apply to all transactions undertaken with the supplier.

## 2) Ordering

Binding for us are only orders that are conveyed in writing. Agreements rendered orally or on the telephone therefore require our confirmation in writing. Alterations of the objects of supply's design and delivery can be undertaken by us within the bounds of an encumbrance to be reasonably borne by the supplier. To be jointly agreed upon are ramifications, with these especially including alterations in costs and deadlines of delivery.

Spare parts: the supplier commits itself to the creating and delivering of spare parts for the facilities and sets delivered by it for at least the 15 years subsequent to the termination of supply of the series.

## 3) Confirmation of order

Unless otherwise agreed upon in writing, the acceptance of our order occurs through the returning of the copy of our commission, with this having been signed by the supplier, or through the issuing of an order confirmation by it. Should this requirement not be satisfied within 10 working days subsequent to the receipt of the order, the commissioning party will be no longer bound by it. Alterations made by the supplier in the course of confirmation of the commission only take effect upon our rendering in writing of our consent. This especially applies to cases in which the order does not list a price. These conditions also correspondingly apply to the ordering of services.

The deadlines and numbers of units listed in the order are binding.

## 4) Cancellation

The ordering party reserves the right to rescind at any time its order or to withdraw from its contract, provided that the party defrays all proven costs incurred until this point in time. This applies only to those products and services exclusively manufactured, produced or used for and by the ordering party. (No defraying of costs will be granted for standard products and services capable of being distributed or sold to other parties.)

## 5) Prices

Prices listed in our order are binding. In cases in which the prices and conditions of payment and supply – and the dates of the latter – are not established in the order, the conditions of these GCP

apply. The order takes effect only upon the subsequently-named prices being accepted by us in writing within 10 days. The prices listed are, except in cases in which the order is based upon a written agreement laying down divergent ones, free delivery to place of delivery (DDP place of delivery according to Incoterms 2010 in the respective and valid version). Prices include as well packaging and transport insurance. Domestic prices are reported at net and do not include turnover tax. No recompense will be paid for the compilation of offers, cost estimates, plans and documents, due to the lack of agreements indicating otherwise.

## 6) Packaging

Unless otherwise agreed upon in writing, packaging is included in the price. With the exception of special conditions, merchandise is to be packaged in a standard and efficacious way, one conducive to transport and without any flaws (one satisfying any applicable legal norms), and one taking into account the effects expected to be experienced in consolidated freight and general cargo transport. Unless otherwise and separately agreed, supplies of transport and emballage become our property. Should they have been properly packaged, items are returned at the supplier's peril and costs. All damages arising from the improper packaging of items being delivered are to be borne by the supplier. The packaging is always to be affixed with our order number and with the respective article number. Suppliers in Austria are to include the ARA license number on the invoice and on the bill of lading.

## 7) Terms of delivery and deliveries

The stipulated term of delivery, whose time of application starts with the date of ordering, is to be strictly adhered to. Ahead-of-schedule deliveries can be undertaken only with our consent. The failure to secure this entitles us to retain the right of invoicing the supplier for the associated costs (of, for instance, warehousing), and to do such as part of the full payment. In cases of early delivery, the terms of payment begin only upon the originally-agreed upon date of delivery. The supplier's failure to deliver the items according to the preset schedule or to deliver all items entitles us to retain the right to lodge the claims to which we are legally entitled in such cases, or, should we so choose, to charge the supplier a guilt-independent penalty amounting to 0.5% of the order amount per day. This may not exceed 10% of the order amount. We expressly reserve the right in any case to lodge claims for indemnification, with these particularly applying to that for any damages due to delay (missed out profits, damages arising from interruption of operations and other costs). We are further entitled, in cases of not meeting the agreed upon the date of delivery, or of incomplete delivery, to fully or partially withdraw from the commission, and to do such without setting a further deadline, and for this not to affect our claims for indemnification. Alterations in the amount of delivery require our written consent. In cases in which we declare our willingness to accept items delivered subsequent to deadline, the supplier is to bear all costs arising from the need to undertake special measures to prevent further delay (for instance: air mail or express delivery). We are entitled to alter the items and deadlines listed in orders five working days prior to the planned date of delivery.

Foreseeable delays in delivery or other events hindering the fulfillment of commission are to be immediately related to us, along with explanations for such. This alerting releases the supplier from its obligation to render indemnification only to the

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extent to which we had the capability of preventing or reducing the resultant damaging to us. Expenditures necessitated by the prevention or reduction of damages resulting from the delay of delivery are to be borne by the supplier.

## 8) Transport and transfer of risk

Unless otherwise expressly agreed upon with us, freight forwarding and delivery are to be expressly agreed upon with us. The transfer of ownership occurs at the same time with the transfer of risk, in accordance with INCOTERMS 2010, with this taking place upon the proper acceptance at the place of delivery listed in the order. This also applies to situations in which a paid freight delivery was not separately agreed upon. To be immediately relayed to us immediately upon the dispatching of each shipment to us is the documentation of shipment (two copies of the bill of lading, notification of delivery, packaging slip, lists of containers). To be enclosed in the shipment are the waybill, a packaging slip and a bill of lading containing our order and the article numbers. Also to be included is the notification "for receipt by the recipient". We will bear the costs of transport insurance only in those cases in which such has been expressly agreed upon. Transnational shipments require the inclusion of at least two invoices and declarations of origins in the waybills. These items are for customs. All shipments whose failure to be accepted is due to the non-observance of our shipment, customs and documentation stipulations will be stored at the costs and risks of the supplier until the trouble-free completion of the business transaction can be undertaken, thanks to the demonstrable transferring of the proper papers. The supplier is to bear all risks, damages and costs resulting from the non-observation of our shipment, customs and documentation stipulations. An option is the term of falling due of the payment of invoice's being postponed to the time at which the delivery occurs in a proper and defect-free way.

## 9) Rules of documentation

All papers of delivery and all invoices are to clearly and legibly contain the date and number of our order, the number that we have given to the supplier, and, in the categories foreseen for such, our numbers of article, order, drawing and part. Also to be included are the amount and unit of denomination and customs tariff numbers. Prices can only be listed on invoices when accompanied by the above information. A supplier based in the EU is required to document (and to place such on the invoice) for the commissioning party the country of origin of the merchandise, and to do such via a long-term declaration of supply. A supplier not based in the EU has to do such via a proof of preferential status or a certificate of origin. An alteration of the origin of the merchandise is to be immediately related to the commissioning party and at the supplier's initiative. The supplier exempts the commissioning party from all costs arising from the inapplicable, incomplete or incorrect disclosure of origins or from documentation of such showing the same flaws. The supplier is required to grant access to a representative of the commissioning party to its business and production premises.

The supplier has to ensure that each of its subcontractors has been contractually required to adhere to the stipulations laid down in Point (9).

## 10) Guarantee

Unless our order contains stipulations foreseeing otherwise, the merchandise has to display the customary characteristics, with these including quality, form and others. A failure to do such will constitute a breach of contract. The supplier guarantees that its merchandise is free from flaws, that it accords with the specifications, blueprints, samples and descriptions, that it has the quality stipulated in the contract, and that it is suited for the foreseen use. The supplier also guarantees the fulfillment of all laws and regulations in force in the respective markets of sale and involving the product's manufacturing, and, if applicable, development. The supplier also guarantees the fulfillment of its contractual obligations. Rejected goods – with this being at our discretion and with this to be without giving rise to further expenditure and costs – are to be either replaced (exchanging of deficient goods for ones showing no deficiencies) or to be the object of a credit balance amounting to the invoice price. The latter is only to be undertaken in cases in which the supplier refuses to deliver replacement parts, or in which doing such in time is not possible. Should such be necessary, we are also entitled to undertake the remedying of the deficiency, or to commission a third party to do such, at the supplier's cost. In cases in which the deficiencies are substantial or can't be remedied, or in which the supplier refuses the request to remedy them, we are entitled to withdraw from the contract and to demand the corresponding indemnification. The supplier expressly refrains from objecting to delayed claims of deficiency. The need to achieve the removal of grounds for the objection and cases of obviously-apparent errors entitle us to divulge these to the supplier within 30 days. We are not bound by any terms involving the remedying of objections in cases of hidden errors. We will, however, immediately inform the supplier upon our learning of such. Regarded as being hidden mistakes are also those becoming visible upon removal of the item from the packaging with which it is customarily covered until the point of use. The fact that we have accepted under certain circumstances a shipment comprised of items not meeting our satisfaction does not represent a ceding of our right to refuse further shipments also showing a deficiency of quality. The term of warranty commences for replacement parts and repaired goods upon the proper acceptance or deficiency-free repair of such. The supplier guarantees the conducting of a complete inspection of the goods at the time of their departure from the warehouse, so as to ensure an orderly and deficiency-free delivery. Checks of items entering our storage facility are only undertaken by us in cases of externally-obvious damaging and/or divergences in terms of identity and amounts. The term of warranty begins for all goods upon the date of delivery, and ends upon the earliest of the dates mentioned below (i) upon the end of the warranty term granted to the end-user of the goods or to the products integrated into the goods; (ii) five (5) years after the date of delivery. Expressly excluded is a claim for objections, in accordance with § 377 of Austria's Commercial Code. Taking effect to our benefit is an exemption from indemnification and lawsuit. It applies to all costs and damages, with this especially including those ensuing from product liability stipulations (both Austrian or non-Austrian) or from deficient supplying, or from those contravening the agreement. This exemption from indemnification and suit also applies to all damages whose deficiencies cause injury to third parties (purchasers of our products and facilities). This applies, however, only to the extent that claims are made and lodged with us. Requisite covering purchases are to be regarded as being included. We are obliged to immediately inform the supplier of any such availing by third parties.

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The repeating of the delivery of the same deficient goods or the repetitious and deficient exchanging or improving of such by the supplier entitles the commissioning party – without this pertaining to its claims for replacement - to withdraw from the contract of supply experiencing the deficient supply, as well as from other contracts of supply and framework contracts featuring the same or similar goods, and to do this without giving rise to claims held by the supplier against us.

The seller also takes on the obligation to render guarantees for the goods and parts delivered by it but not manufactured by it. In case of a complaint, with this not depending upon the reason for the complaint or of its extent, we reserve the right to charge a lump sum processing fee of EUR 75 + turnover tax per letter. We expressly reserve the right to claim all further costs, expenditures and damages.

## 11) Invoicing & payment

Two copies are to be issued of each invoice. The invoice has, in any case, to contain all items stipulated by law, with these especially including the UIDs of both the supplier and the ordering party, the number of supplier, the number and date of the order or of the activation of the delivery, date and number of the order confirmation, further data on the ordering party (account allocation data, article number), unloading point, number and date of the bill of lading and amount of the goods invoiced. Should the ordering party so wish, to be included is also a copy of the proof of performance signed by the ordering party. Copies have to be marked as such and have to designate the supplier. Invoices are to be issued in way according to our rules and specifically to Point 9 of our GPC. Invoices and proofs of performance are to be appended to the invoice. Invoices and delivery bills not issued in accordance with these rules are liable to being not recognized by us and to being returned. Falsely or incompletely issued invoices cause the demanding, without exception, of credit balances of an amount comprising that of the entire one of the incorrect invoice and of the new one. The term of rendering payment begins upon the receipt of correct documents.

Unless otherwise and expressly stipulated in another written contract, payment ensues upon the receipt of all goods and the invoice and within 90 days net, or within 45 or 21 days. The latter two options give rise to discounts upon the invoice amount of 2% and 3%. The day of receipt (proof is provided by the stamp of incoming correspondence) is the date of record for terms of payment. We reserve the right to pay either via a bank transfer or via an acceptance order submitted in accordance with our instructions for discounting at the bank of our choice. In this case, interest and fees will be directly charged to us by the bank. Assignment of our debts is only permissible upon our having rendered our express approval. COD shipments will only be accepted when such has been expressly agreed upon. Receivables upon goods and services supplied have a term of limitation of one year subsequent to the date of acceptance or conclusion of the rendering of service. We reserve the right to conduct payment once a week. In such cases, payment will be made in the week of the amount's falling due. Payment is not to be construed to indicate recognition of the proper supplying or a refraining from rights accruing to us. Counterclaims entitle us to undertake offsetting.

## 12) Order documents & intellectual property rights & confidentiality

The contractual partners commit themselves reciprocally to treating confidentially all details that are not generally known, that pertain to technical and business matters, and that they learn through their business relationship.

All supplemental items generated in answering our queries or processing our orders (sketches, drafts, samples and models) as well as from our orders of execution, tools and the like remain our property. We freely dispose of them at any time. They can neither be copied, nor made accessible to third parties nor used for other purposes without our express written consent. All of the above is to be returned, without our having had to request such, to us upon fulfillment of the order and at the cost of the supplier. Requisite for the utilization for advertising purposes of the order documents (sketches, logos, models and samples and the like) is our express approval.

Both contractual parties commit themselves to maintaining secrecy on all confidential matters and further information attained through this business relationship. This applies to the period during and after this relationship. The supplier is, however, entitled to provide its subcontractors with confidential information, in cases and to the extent in which doing such is requisite to fulfilling the commission. Both contractual parties commit themselves to making this obligation to maintain confidentiality mandatory for their employees. The supplier is liable for all damages arising from a breach of this obligation.

## 13) Product liability

The supplier confirms that it knows the end product into which its parts or basic material of supply is to be incorporated. It is liable for its product's fully satisfying the requirements of the end product, except in cases which the supplying occurs on the basis of diverging specifications or sketches stipulated by us. Non-Austrian suppliers are required, in cases of recourse pertaining to Austria's Product Liability Code (PLC), to completely protecting us from claims and suits of damage, and to indemnifying us for all advances and costs incurring to us due to our supplying of a deficient end-product, and to do such independent of any extant and legally-stipulated option of recourse. The supplier is cognizant of the extended liability imposed by the PLC, and thus of the fact that this requires the indemnification of damages sustained by persons and for their pain and suffering, and of all ones to property and for the ensuing impairment of wealth, with this comprising missed out upon profits, and with this being regardless of the nature of the party suffering these. Our being liable due to the deficiency of a component forming an object of this contract obliges the supplier, in addition to the liability imposed by law, to refund us for all actions of replacement rendered by us and for all costs ensuing from this case of liability. The supplier is required to make immediately accessible to us all information about possibly or recently-discovered flaws in the product of delivery. In cases in which the product or basic material of supply is, due to new scientific discovery, no longer at all, or at least no longer in association with the design, in use or to be used, the supplier commits itself to accepting the returning of all extant inventories delivered prior to the publishing of these scientific discoveries, and of doing such at invoice value. The contractual partners assume that the products or basic materials ordered are those for which the supplier has manufacturer's liability. Should it turn out that all or certain subproducts were not manufactured by the supplier itself, it still bears manufacturer's liability for such. The

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recurrence of products requiring alterations of their entireties or of their characteristics or parts has to cause our being notified of such.

This applies to both the materials and to the manufacturing process used and undertaken by the supplier and the subsupplier. Should this alteration make the product unusable for us, this constitutes for us grounds for the immediate termination of the contract of supply.

The supplier is obliged to maintain product insurance for its operations and offering an adequate amount of coverage, and to provide us with the corresponding proof of such an agreement, should we demand such. Excluded on an entire and prior basis are limitations on claims accruing to us from this.

## 14) Indemnification

To the extent that separate stipulations are not reached in these conditions of procurement on the rendering of indemnification, the supplier is obliged, with this not depending upon the degree of culpability, to indemnify – with this comprising missed out profits - for the damage directly or indirectly experienced by the ordering party due to a deficient supplying, to a breach of official rules of security, or to any other cause attributable to the supplier. The supplier is especially liable for all damages ensuing from deficiencies and solely involving property.

## 15) Quality, security and environmental protection

Unless otherwise agreed upon, the supplier is obliged to fulfill quality assurance norms laid down in ISO/TS 16949, or, at least, in ISO 9001 in their latest and thus valid versions.

The goods supplied have to meet Austrian and international security and environmental protection standards, and may not contain, especially, cadmium, mercury and their compounds; or halogenated flame retardants. In-depth quality assurance norms are governed by the written and dedicated quality assurance agreements (QAA).

## 16) Information, materials declaration, RoHS, disposal

Regardless of legal requirements to instruct, the supplier is required to provide BBG with all requisite and useful information on the goods or services being supplied, with this especially including instructions on their proper storage and security datasheets, in accordance with the following regulations 91/155/EWG, 93/112/EWG and 99/45/EG. The supplier is also required to inform BBG about the possibility of an incurrence of hazardous wastes or of the incidence of contaminated oil from and in the goods supplied by it. This is to comprise the items' nature and ways of disposing of them, if any. Should BBG so demand, the supplier is required to accept, on a free of charge basis, the wastes, as defined by Austria's Waste Disposal Act, remaining from the application of the products supplied by it, or of the same type of products. This is however limited to the amount of items delivered by the supplier. Should the supplier refuse acceptance, or should not be possible, BBG is entitled to undertake the disposal at the cost of the supplier. The supplier guarantees that the items being supplied by it on the basis of the order conform to the stipulations of the RoHS (Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment) directive, and that they thus adhere at the time of supply to the ceilings set by the RoHS directive on the employment of certain hazardous materials in electrical and

electronical devices (EC Directive 2002/95/EC). The supplying of items not conforming to the RoHS directive requires the supplier to indemnify BBG for any damages resulting from the items supplied, with this not affecting any guarantee claims.

## 17) Tools, facilities and equipment

Tools, facilities and equipment produced and paid by us are unlimitedly our property. We dispose of these at any time and without incurring any further costs. Comprised in this are spare parts, design sketches, documentation, maintenance documents, instructions of use and rights. The in-depth stipulations of this are to be established in a separate contract of tool ownership. The use of models, dies, stencils, samples, tools and other means of production and of confidential data provided to the supplier or completely paid by the ordering party in the creation of items supplied to third parties requires the prior written consent of the ordering party. The supplier is obliged to maintain such means of production in a proper way, and to do so at its own cost. Should such be required, it is required to overhaul them, so that they are unlimitedly ready to be used at any time. The supplier is obliged to secure insurance adequately covering these means of production against any form of damaging, and to furnish, should such be demanded, the ordering party with proof of the securing and maintenance of this insurance coverage.

## 18) Provision of materials

Materials furnished remain the property of the ordering party and are to be stored separately and free of charge. They are to be appropriately labeled and managed. Should the ordering party so demand, their transfer is to be confirmed. Their only permissible use is for commissions placed by the ordering party. Abnormal losses of value or loss of the materials provided requires replacement on the part of the supplier. The consequences of the failure to provide the requisite materials in a timely way is to be borne by us; any claims for indemnification by the supplier due to the failure to provide the materials in a timely way are excluded in all cases. The supplier is obliged to immediately inform the ordering party of the lodging of claims – also by a court-decree garnishing – by third parties.

## 19) Workforce protection

The supplier commits itself to undertaking the coordination required by §8 of Austria's Workforce Protection Act.

## 20) Intellectual property rights

The supplier declares that the goods and products supplied do not tamper with the patent rights held by third parties, and that, in cases of disputes about patent rights and involving the goods supplied as well as those involving other rights to intellectual property and those involving registrations by third parties, it will completely exempt us from damage and for lawsuits. Drafts created for us by the supplier – no matter of whatever kind – become our sole property. All rights, with this especially including those of exploitation, also thus accrue to us. Software developed by us – as an independent product or in association with hardware – is to be transferred to us, with this to include the source codes and all documentation requisite to use and maintain the software.

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The name of the manufacturer or its corporate logo is only to be placed on goods and similar items manufactured according to our specifications or for us after our express written consent has been secured. Such an assent applies only to the individual and special case for which it was granted. Should the parts ordered by the commissioning party have been developed by it, the supplier commits itself to exclusively delivering these to the commissioning party, and to not mentioning and displaying these parts in its catalogues.

We are authorized at any time to offset claims placed by the supplier with counterclaims to which we are entitled to lodge with the supplier, for whatever reason whatsoever.

**21) Place of fulfillment and court of jurisdiction** The place of fulfillment for the goods and services supplied on the basis of these conditions of procurement is to be that in which the supplying, in accordance with our instructions, is to be rendered, or that agreed upon in the period prior and until the date of delivery as being the place of supply.

Agreed upon as charged with the resolving of any disputes is exclusively the court responsible for the ordering party's matter. Agreed upon is that Austria's code of laws will be exclusively applied. It is being expressly and exclusively agreed that legal disputes with a supplier whose headquarters are in a country with which Austria has not concluded a treaty of execution are to be resolved by the court of arbitration employing the arbitration and settlement procedure of the Federal Chamber of Commerce in Vienna. The sole language of the arbitration procedure is German.

## **22) Acts of god**

Such acts of god as labor conflicts (strikes and lockouts), unrest, official measures, natural catastrophes and other unforeseeable, inescapable and serious events entitle us to partially or entirely withdraw from an order placed, or to demand the postponing of supply or execution of it to a later point in time, without our doing such's giving rise to the accrual of further claims upon by us by the supplier. The partial loss of production capacities and supply capabilities due to acts of god cause the supplier to be required to set forth the delivery in a way at the very least proportional to the remaining production capacity or supply capabilities. The supplier is also required to undertake all possible technical and feasible (from the business point of view) efforts to ensure the setting forth of the delivery of the ordered items even in cases of acts of god.

## **22) Severability clause**

The lack of application or of validity of individual stipulations of a further contract or of ones in these General Conditions of Procurement does not affect the validity of the other stipulations of the contract and of these General Conditions of Procurement. The inapplicable or invalid stipulations are to be replaced by ones having the same business import and effect. The same applies to a gap in regulations.