



**General Conditions of Purchase**  
**of**  
**Global Hydro Energy GmbH**  
**FN 221408a,**  
**Version 28.3.2019**

These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") apply **exclusively** to the whole spectrum of our purchase orders and are considered to be an integral part of the purchase order/contract. Apart from these GTCP no other conditions shall be effective. Conditions of the Supplier, which diverge from, or which contradict these GTCP are not recognized by GLOBAL Hydro Energy GmbH, therefore conditions of the Supplier shall not become a constituent part of the purchase order, even if the Buyer does not reject them. The contracting parties are named hereafter Supplier and Buyer (GLOBAL Hydro Energy GmbH).

**1. Scope of supply**

The scope of supplies and services is specified in the purchase order. The Supplier is obliged to point out any discrepancies in the requirements of the Buyer and to request any information or specification which may be missing.

**2. Offer, order confirmation**

The Supplier's offers shall be binding for a period of 4 months from the date Buyer receives Supplier's offer. The order confirmation shall be sent within 7 days after receipt of the order.

In the event that the order confirmation deviates from the purchase order, the Supplier must indicate and clearly highlight the deviations. The Buyer is only bound to a deviation if he has agreed specifically to it in writing.

**3. Price**

The price is stated in the order shall be binding. It is a fixed net price without the respective statutory value added tax but including safe packing for transport to agreed place of delivery (that means protection against rain including the required conservation, on a stable wooden platform, covered and sealed with a thick plastic foil) and including all costs related with contractual fulfilment. The price include, but is not limited to, all add-ons and social costs, travel expenses, wages and subsistence, transportation and accommodation of the personnel deployed for works, commissioning and contractual tests, etc. Price is deemed in Euro, unless otherwise agreed.

#### **4. Terms of delivery**

Unless a different Incoterm is stipulated in the order, DAP Niederranna, Incoterms 2010 shall be deemed agreed.

Any additional or incidental costs or expenses related to the execution of a purchase order, which are neither foreseen in the purchase order nor in these GTCP or the INCOTERMS-Clause, shall be borne by the Supplier.

#### **5. Terms of payment**

The payment claim arises after receipt of the complete and faultless delivery, including documentation. If the Supplier is obliged to provide test operation and/or commissioning fulfilment and the agreed specificity parameters are not reached, the Supplier shall not be entitled to further payment until the he complies with them.

The Buyer is entitled to keep 10% of the order value as retention money for the duration of the warranty period. This retention money shall however be paid to the Supplier, if he submits a bank guarantee according to Buyer's draft.

Unless otherwise agreed, the Supplier shall grant a 3% discount for prompt settlement in respect of payments made within 14 days after receipt of an invoice; otherwise payment will be made within 60 days after receipt of the invoice.

The acceptance of goods or services shall neither constitute an acceptance nor a waiver of rights of whatever kind. If the delivery is not fulfilled by the Supplier according to the contract, the Buyer shall be entitled to withhold the total contract price until performance has taken place in accordance with the contract.

#### **6. Dates of delivery**

The agreed delivery dates shall be binding. Delivery period start when the order is received. The Supplier is obliged to confirm immediately and in writing receipt of the order.

Once the order is placed, the Supplier shall send a monthly status report. 2 months before the delivery date, the status report shall be due every 2 weeks. In addition, the Supplier will enable the Buyer to supervise the production process.

#### **7. Delay**

If it is foreseeable that the Supplier will fail to deliver on time or perform a proper delivery, the Buyer shall be entitled to take all necessary measures to avoid any delay in delivery and/or performance at the Supplier's cost and risk. Delivery dates are deemed complied only when all necessary documents have been supplied and also other contractual obligations (like tests, performance parameters) are completely fulfilled.

The Supplier is obliged to notify the Buyer in writing without delay, if circumstances arise or become apparent which give reason to believe that the agreed delivery-time or time of supply cannot be met. This notification does not release the Supplier from the supplier's liability for delay.

In the event of a delay, after a reasonable period, the Buyer is entitled to withdraw from the contract. This applies even if the Buyer has previously accepted partial delayed deliveries without reservation.

Acceptance of delayed delivery by the Supplier shall not imply a waiver of claims for compensation, if any, on grounds of the delayed delivery.

The Supplier shall pay all damages in the amount of the actual loss incurred by the Buyer, including loss of profit. In the event the customer of the Buyer claims damages against the Buyer due to defective and/or delayed delivery or non-delivery, the Supplier shall indemnify and hold the Buyer harmless for the complete loss, which shall include all damages and cost incurred including attorney fees and court proceeding expenses, whether or not a lawsuit is filed.

#### **8. Liquidated damages for delay**

The Supplier shall pay as liquidated damages 4% of the total contract price per commencing calendar week of delay up to a maximum of 20% of the total contract price and shall not affect Buyer's further statutory rights. Liquidated damages shall apply independent of Supplier's fault and any proof of damage. Buyer shall be entitled to deduct the liquidated damages from the Supplier's invoices. The Buyer reserves the right to claim damages exceeding the amount of the liquidated damages, that means the Supplier shall be obliged to reimburse to the Buyer all direct, indirect and consequential losses as well as financial losses (including loss of profit) caused by the delay.

#### **9. Warranty**

The Supplier guarantees that his products and services will conform to the contractual specifications, comply with properties and characteristics that are usual expected, the state of the art and suitability for the purpose of the products and services made known by the Buyer to the Supplier. Unless otherwise specified in the order, it is understood that the destination and purpose of the ordered products and services is the hydropower plant.

The Supplier warrants to the Buyer that he will use appropriate and new materials, that he will manufacture the products adequately and in compliance with the underlying plans, design engineering, specifications, technical drawings and that he will provide for their proper installation.

Unless otherwise specified in the order, the products supplied by the Supplier shall comply with the applicable Austrian safety regulations and be equipped with the prescribed safety precautions. In addition, the respective product-relevant legal provisions as well as the relevant ÖNORMs, subsidiary DIN standards as well as the other industry-standard standards shall be met.

The warranty period shall be 39 months. If an acceptance procedure has been agreed, the warranty period shall commence upon acceptance.

If defects occur within the warranty period, it is presumed that the Supplier is liable for these defects unless proven otherwise.

The Buyer will check the delivery within reasonable time after receipt only with respect to the number of components ordered and immediately visible defects. The parties waive the obligation of checking defective products, services pursuant to Section 377 of the Austrian Business Code (UGB). Written notification from the Buyer to the Supplier is sufficient.

Supplier undertakes to correct without delay, at its own costs, all defects claimed by the Buyer within the warranty period.

The costs and expenses in connection with the warranty shall be borne by the Supplier, these shall also include packaging costs, freight and delivery, labour costs for assembly and disassembly, travelling expenses, replace of products and repair of defects.

In the event of imminent danger or if the Supplier fails to rectify defects within a reasonable time, the Buyer shall be entitled to remove the defects by himself or to arrange for such works/repair/replace to be done by third parties at the Supplier's expense. The Supplier shall fully reimburse the Buyer the cost of such repairs, even if it exceeds the cost of repair by the Supplier.

The Buyer is entitled to assert claims against the Supplier pursuant to Section 933 b of the Austrian Civil Code (ABGB), irrespective of whether the final customer is a consumer or a company. Therefore the Supplier waives the right to object the Buyer failure to notify warranty claims in a timely manner pursuant to Section 933 b, Paragraph 2 of the Austrian Civil Code by the Buyer.

#### **10. Documentations, Certificate of origin, Supplier's declaration**

The Supplier is obliged to delivery all necessary and appropriate documentation and instruction for the use of the ordered products. In addition to the stipulations made in the respective order, these include at least the following: the operations and maintenance manuals, section drawings, wiring diagrams and safety instructions.

Upon request, an official document proving "European origin" and a "Supplier's declaration for delivered products having preferential origin status" has to be supplied. HS-Codes (Taric-no.)

have to be stated at every position of the invoice. Documentation, certificates etc. have to be delivered in English or upon request in German.

#### **11. Insurance**

The Supplier undertakes to conclude and prove that he is covered by public liability insurance for damages. The sum insured shall be no less than EUR 10 million each for personal injury, property damage and extended product liability.

#### **12. Test runs, Factory tests, Intermediate checking**

The Buyer has the right to participate either himself or through authorized persons and with his customer in test runs and factory tests. The Supplier shall inform the Buyer between 3 and 5 weeks beforehand of such tests.

The Buyer shall get access to the ordered products at any time for the purpose of checking delivery times (production status) and quality of the products. This access-right is valid for all production sites of the Supplier and if needed for his sub-Suppliers.

The Buyer, his customer and/or authorised person will program and organise the visits to the Supplier's premises according to the Supplier's schedule. Each party will be responsible for his own travel expenses.

Notwithstanding the foregoing, when the visit is organized according to the schedule and confirmation provided by Supplier to participate in test runs, factory test and/or intermediate checking and there is a delay from Supplier's side not properly informed on time to the Buyer and/or sub-Suppliers, which makes not possible to participate/perform the test runs, factory test and/or intermediate checking, the travel expenses and other side costs will be borne by the Supplier.

#### **13. Handing over**

Products or services which have been supplied by the Supplier shall be accepted by the Buyer if the products or services are in accordance with the contract and free from any defects. If a test operation and/or commissioning have to be done by the Supplier, acceptance shall take place after the specified parameters have been reached and/or commissioning has been conducted successfully and/or scheduled performance/output has been achieved

#### **14. Right to termination, Suspension**

The Buyer reserves the right to order the Supplier to suspend the performance of the contract at any time.

Outside of reasons given by law, the Buyer is entitled to withdraw from the contract as whole or as part, if it can be determined objectively after conclusion of the contract that the Supplier will not be able to fulfil his contractual obligations. This also applies to any bankruptcy proceedings to the extent permitted by law. In such a case the Supplier is only entitled to

charge the Buyer for the services proved to have been performed by the date of withdrawal. Section 1168 of the Austrian Civil Code shall not be applicable.

## **15. Intellectual Property**

Any tools, patterns, samples, models, profiles, plans, drawings, photos, film records etc. provided by Buyer as well as any materials and working results derived therefrom shall remain Buyers property and shall not be made available to any third party nor be used for any other purposes than those contractually agreed, without Buyers prior written authorization.

The Supplier guarantees that all deliveries and services are free from proprietary rights of third parties, especially that the delivery and contractual use of the delivered products and services do not infringe patents, design protection, trademarks or other proprietary rights of third parties. Therefore the Supplier shall indemnify and hold the Buyer harmless from any infringement claims including lawyers and legal costs raised against the Buyer by third parties.

If the Supplier is obliged to deliver software, the Supplier will grant the Buyer an unlimited (in time and place), transferable, non-exclusive, unrestricted and sub-licensable right to use this software.

Any and all documentation such as plans, designs, drawings and models shall become the property of the Buyer, even if the contract should be terminated prematurely and shall be handed over to the Buyer upon request. Furthermore the Supplier shall grant to the Buyer exclusively, irrevocably and without claim for additional remuneration the sub-licensable right to use, unlimited with respect to context, time and place as well the corresponding permission to use the products, works resulting from this contract. The Buyer shall be entitled to exploit the respective plans, or otherwise use said plans and other documentation in their original form or after modification without any further participation or approval of the Supplier.

## **16. Confidentiality and Data protection**

Both parties undertake to use technical, business and commercial information received from the other party only for purposes of performance of the subject of this contract and to keep it otherwise confidential. In the event that the Supplier makes use of a third party for performance of its contractual obligations, he shall make sure that such third party commits himself also the same confidentiality.

The Supplier shall use data that has become known to him as confidential and use them only for the purpose of execution of the purchase order. Besides that, the Supplier shall keep confidential the results or partial results obtained from the Buyer in fulfilment of the purchase order and use them exclusively for the performance of the purchase order. The Supplier shall protect such data and information from access by third parties and shall subject his staff members and agents as well as subcontractors involved to the same secrecy obligation. The provisions concerning secrecy and data protection shall apply also after complete performance

of the purchase order and termination of any and all contractual relationships with the Supplier.

Without the Buyer's written permission, Supplier shall not make public any information in connection with the purchase order.

Supplier, his personnel, his agents and his subcontractors are not entitled to take pictures and/or make videos of the plant or site fitted out by him and to make any releases and publications to the media irrespectively if they are press, news services, radio and TV or online media or social media portals.

The Buyer is collecting and processing the personal data of the Supplier which he has provided for the purpose of inviting offers, performance of purchase order, for the purpose of legal requirements or by virtue of a legitimate interest.

Further information regarding data protection is available under: <https://www.global-hydro.eu/en/info/data-protection-information/>

The Supplier is responsible, that all personal data, which he is collecting, processing and transmitting, is in accordance with the EU General Data Protection Regulation (GDPR) as well as any other relating statutory law. The Supplier shall indemnify and hold the Buyer harmless against all damages arising from an infringement of this clause.

#### **17. Subcontracting**

The Supplier is not entitled to subcontract the entire contract volume or the major part of it. This may only be done with prior express written permission by the Buyer. In case that the Supplier assigns parts of the purchase order to third parties, the Supplier shall be fully responsible and liable for those third parties.

#### **18. Release for delivery**

Prior to each delivery, the Supplier shall obtain a written release from the Buyer. For this purpose the Supplier shall send all measurement protocols, dimensional records and certificates to the Buyer. In case this documentation confirms that the ordered products comply with the contractual specifications and drawings, Buyer will give the written release. If the products do not match, the Buyer will notify the further procedure (e.g repair or replacement).

#### **19. Tools and materials**

Works, tools and/or material provided by the Buyer remain the property of the Buyer. Supplier shall store and/or use them carefully and properly. The use is only permitted for the purpose of the performance of Buyer's order. In case of theft, depreciation or loss, the Supplier is obliged to replace them completely. Supplier's compensation claims due to non-timing supply of the tools/material, as well as a right of retention of the Supplier are excluded.

## **20. Liability**

The Supplier shall be liable for all damages caused by him, particularly, but not limited to defective and/or delayed delivery or non-delivery.

Furthermore the Supplier shall be liable for any damage caused by him and his subcontractors and sub-suppliers. Full compensation has to be paid by Supplier in any times, independent of the extent of leverage.

In the event, that the customer of the Buyer or third parties claims damages or raise a claim towards the Buyer on grounds of defective and/or delayed delivery and/or non-delivery etc., the Supplier shall be obliged to indemnify and hold the Buyer harmless against all claims, damages and legal proceedings.

## **21. Severance**

If any provision of this contract (or part of any provision) of this contract or any subsequent amendment or supplement should be or become ineffective, invalid or unenforceable the effectiveness, validity or enforceability of the remaining provisions shall be unaffected. In the case of ineffectiveness, invalidity or unenforceability of any of these terms, a valid provision that comes as close as possible to the economic meaning of the ineffective, invalid or unenforceable provision shall be applied between the parties.

## **22. Law and Jurisdiction**

All disputes between the contracting parties shall be settled under Substantive Austrian Law with the exclusion of its conflict of law rules. The applicability of the Unity Nations Convention on Contracts for the International Sale of Goods, GISG, of 11 April 1980 is excluded.

The exclusive place of jurisdiction for all disputes between the contract parties shall be the competent court in Linz, Austria.