

**GENERAL TERMS AND CONDITIONS (PURCHASING) - "GTC PURCHASING"**  
of Glogar Umwelttechnik GmbH, FN 182072d LG Steyr ("GLOGAR")  
as of March 2016

**1. Scope - definitions**

**1.1** All of GLOGAR's purchasing-related offers, orders, acquisitions and other legal transactions and services pertaining to purchasing shall be subject exclusively to these GTC PURCHASING. They are part of every purchasing agreement of GLOGAR. These GTC PURCHASING are regarded as accepted in every case when an order is performed. The supplier acknowledges that even now, GLOGAR expressly rejects all deviating provisions, in particular the GTC of the supplier. These GTC PURCHASING shall also serve as the framework agreement for all further purchasing contracts.

**1.2** Arrangements and conditions by the supplier which deviate from these GTC PURCHASING or from the information or specifications of our order shall require our prior written acknowledgement to become valid. This also applies to all changes of separate arrangements and orders. Deviations from an order must be clearly identified in the confirmation of the order. In case of disagreement on the principles of the contract, the following order of precedence shall apply: Our order: any special arrangements confirmed in writing; These GTC PURCHASING: statutory provisions.

**1.3** A "supplier" is every contracting and/or negotiating partner of GLOGAR who performs a service, has performed a service or intends to perform a service for GLOGAR, regardless of whether a contractual relationship has already been established. A "service" ("performance object") is every product (all goods), every delivery and/or every other service by the supplier, regardless of what type of "delivery contract" ("order", "purchase order", "acquisition order") constitutes the arrangement between GLOGAR and the supplier.

**1.4** The language of negotiation and contracting shall be German.

**2. Offer - order - confirmation of order**

**2.1** Unless expressly agreed upon otherwise, offers and cost estimates addressed to us are binding and free of charge. In their offer, suppliers must exactly follow our inquiry with regard to quantity, specifications and condition of the service, and in case of deviation, this must be expressly identified in advance in writing, otherwise there is no entitlement to a higher remuneration. Suppliers shall be committed to their offer for three months after it has been received by GLOGAR.

**2.2** Every order must be officially confirmed in writing immediately (in particular stating the order number and the firm price and delivery time). If this written confirmation does not arrive within seven days after the order date, we are no longer committed to the order. Notwithstanding, we can

regard the order as accepted by the supplier unless he explicitly refuses the order within that period. If delivery is made or the performance has begun without confirmation of the order, our order shall nevertheless be regarded as irrevocably accepted under the conditions set forth therein in terms of its content. Any deviations from our order shall require our express acknowledgement in writing.

**2.3** Our order number must be quoted in all documents and in all other communication pertaining to our order.

**3. Prices - packaging - terms of payment/due dates - liability risk retention - invoices**

**3.1** Lacking any express arrangements to the contrary, the prices quoted to us shall be firm prices free our plant at AT-4481 Asten or free place of delivery according to the order, including all fees and incidental costs including customary packaging, cost of transportation and unloading. Subject to Point 4.1 and Point 7.5, delivery must be according to CIP Incoterms 2010 (Carriage Insurance Paid To), which must in every case include unloading. No upward price escalation clauses will be accepted unless they have been separately negotiated. Every price increase shall require our express agreement; in that case, down payments already paid shall be upgraded by the same percentage as the total price increase. Price reductions due to changes in the supplier's procurement market must be passed on to us to the full extent. The supplier shall undertake to inform us immediately of such changes in the procurement market. Down payments already paid must be downgraded analogous to the increases.

**3.2** If due to special arrangements the cost of packaging is not included, this must be charged at no more than cost. Packaging charged to us will be returned at our discretion and deducted in full from the invoice. The return shipment shall be at the supplier's risk and expense.

**3.3** Lacking any express arrangements to the contrary and subject to the other provisions of these GTC PURCHASING (see especially Points 3.4 and 3.5), our terms of payment are 60 days net after receipt of the invoice. If we pay within 30 days after receipt of the invoice, we are entitled to a cash discount of 3%; if we pay within 7 days after receipt of invoice, we shall deduct a cash discount of 5%.

**3.4** Notwithstanding the above, in case of a delivery of system components, we are entitled to deduct a liability risk retention of 10% of the total net value of the order, to cover our claims of whatever kind - especially regarding warranty and compensation for damages - for up to three years from the final start-up (acceptance) of the system.

**3.5** Invoices shall become due at the earliest when the documentation named under Point 4.3 is received, including the operating and safety instructions, plans and (detailed) drawings (designs) and the machine software (system program) - see Point 4.3.

**3.6** When paying the invoices, we reserve the right to make use of all legally admissible or otherwise agreed upon offsetting opportunities with our counter claims. No offsetting against our claims is allowed.

**3.7** Invoices must comply with statutory provisions, in particular with added value tax legislation and with any separately made arrangements; invoices must not be included with the shipments but must be mailed to us immediately after shipment. If the law requires that invoices are attached (e.g. for customs purposes), the supplier shall gain no rights whatsoever from this. In every case, invoices must show the complete order number and the date of the order and must refer to the bill of delivery. The supplier shall be liable for any additional or subsequent costs due to incorrect or incomplete billing.

**3.8** Our payment does not mean acceptance of the performance or recognition of contractual conformity and thus does not affect any claims whatsoever to which we may be entitled, especially claims of guarantee, warranty and compensation for damages, and subsequent claims about defects.

#### **4. Delivery - documentation - delivery date - delayed delivery**

**4.1** The ordered services shall constitute an obligation to deliver. Therefore, the supplier shall be responsible for the cost and risk of transportation. The risk of loss or damage is transferred to us only upon delivery or completion. The goods must be properly packaged and processed according to our shipping instructions. Damages resulting from non-compliance with these instructions shall be the supplier's responsibility.

**4.2** Every shipment must be accompanied by a bill of delivery. In addition to the invoice, a notice of delivery must be sent to the email address, e-rechnung@glogar-uwat.com, stating the date and order number, customs tariff number, net and gross weight. Invoices dealing with more than one order and partial invoices shall be returned to the customer. The customs tariff number must be stated on every invoice, delivery notice, bill of delivery and all other relevant documents. Without the shipping documents named above and others that may be named on the order, the delivery is not accepted as a performed service or dealt with, but will be stored at the supplier's risk and expense. The valid number of items and weights shall be those determined by our incoming goods inspection. We do not pay the cost of transportation insurance. COD shipments are not allowed and will not be accepted.

**4.3** With every shipment, the supplier must enclose (i) operating instructions and (ii) safety instructions, each in German. If possible and reasonable, such safety instructions should be attached directly to the delivered items themselves. When delivering system components, the supplier must (iii) with every delivery provide GLOGAR with all plans and (detailed) drawings (designs) and (iv) the machine software (system program); the supplier must ensure that the necessary information is also available in German. GLOGAR must also be provided with all documents in a form that can be digitally processed, on a permanent data carrier or by email.

**4.4** Stated delivery dates and/or deadlines must be kept and are regarded as firmly agreed upon. Delivery deadlines shall begin on the date of the order. The complete performance of the contract determines whether delivery dates or deadlines have been adhered to. This also includes the submission of complete documentation with storage and operating instructions. If the supplier realizes that the agreed dates cannot be kept, he must immediately notify us in writing, stating the reasons, also in view of any possible damage claims that might be filed by the final customer. GLOGAR reserves the right to either determine a corresponding alternative date or to withdraw from the contract without setting an alternative date.

**4.5** In case of delayed delivery, in particular when delivery is performed after the specified time or in smaller quantities than stated in the order, GLOGAR shall be entitled to either insist upon performance or to withdraw from the contract wholly or partially within seven days without setting an alternative date. The supplier shall not be entitled to any claims whatsoever against GLOGAR in case of such withdrawal. Furthermore, we are entitled in any case to demand compensation for all damages we and/or our final customers may have suffered because of the delayed delivery in terms of labour cost, transportation cost, production changes and warehousing. Regardless of whether the supplier is at fault, we are also entitled in case of delayed delivery to demand from the supplier - as minimum compensation - payment of a contract penalty not subject to judicial discretion and amounting to 2% of the delivery value for each week or part thereof, but not more than 10% of the contract value. This shall not affect any damage claims of any kind caused by the delayed delivery. In particular, we shall be entitled to deduct this penalty for delayed delivery without special arrangement or understanding from the amount of invoices. We may reserve the right to charge this contractual penalty only against the final payment. Acceptance of goods delivered late shall always be without prejudice.

**4.6** In case of early delivery or partial delivery, we reserve the right to refuse acceptance at the risk and expense of the supplier. Even if we recognize early or partial deliveries, payment shall be due in accordance with the original arrangement.

4.7 The order we placed must not be passed on wholly or partially to subcontractors without our permission.

## **5. Manufacturing documents - confidentiality**

5.1 All information, drawings, samples, models, plates and other technical aids and/or documents we have given to the supplier for manufacturing the ordered goods, as well as drawings, data and other technical documents prepared by the supplier according to our special instructions shall remain our material and intellectual property. In particular, the copyright shall remain ours. These aids must not be used, copied or made available to third parties by the supplier for anything other than manufacturing based on our order. In accordance with this, they shall be considered business and trade secrets. We can ask for all the above named aids to be returned to us. In every case they must be returned to us free of charge when the order is filled and also if the order does not materialize.

5.2 The supplier shall undertake to keep GLOGAR's business and trade secrets strictly confidential as well as other information GLOGAR calls confidential. Orders and the work relating to them must be regarded as trade secrets. This confidentiality obligation shall not apply to information that is generally known/accessible or which must be disclosed due to mandatory statutory or government regulations.

5.3 The supplier shall be liable for all damages arising from one of these obligations; if the supplier violates these provisions, he shall undertake to pay us a contractual penalty in the amount of at least twice the billing value of the entire delivery, and subject to further damage claims.

## **6. Quality - intellectual property - third-party rights**

6.1 With respect to every service, the supplier shall guarantee that it is according to the latest state of the art, in perfect condition and perfectly executed. Storage and operating instructions must be provided with the delivery and without special request, otherwise the supplier shall be liable for damages resulting from the ignorance of such instructions.

6.2 The supplier shall guarantee that the goods to be provided by him, their processing and use are not protected by registered third-party rights (such as trademarks, samples, patents, industrial designs, etc.) and are therefore available for the free and unrestricted use by GLOGAR. The supplier must indemnify GLOGAR against any such third-party claims and guarantee the unrestricted use of the delivered goods.

6.3 The supplier shall also undertake to hold GLOGAR harmless against all damages such as losses and costs resulting from third-party claims based on the above named services: this shall apply in particular also to product liability claims.

## **7. Warranties - guarantee - liability - pre-acceptance**

7.1 The supplier shall provide a full and actual guaranty for a period of 24 months for himself and on behalf of his subcontractors and prior sales agents for the complete and non-defective implementation as ordered and delivered - especially for the characteristics usually presumed and assured through public assurances, samples and/or models, and for observing all statutory and government provisions which apply at the destination and in the markets made known to us for the deliveries, and/or all other services (including EU Regulations 1907/2006 by the European Parliament and the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)). He shall also guarantee that the design, construction, usefulness and manufacturing technology are in accordance with recognized rules and the latest state of the art in science and technology that only material of first-class and suitable quality is/was used and is suitable for the intended purpose. The supplier guarantees the full functionality and performance of his deliveries and other services such as for equipment, hardware, software, data files, etc. through their entire service life. In case of goods for the installation or use in or with movable objects, the warranty period shall be 48 months. The warranty period shall commence upon acceptance by the final customer or - if used in our own plant - upon first usage of the items. For invisible damage which is only recognized at a later date, the warranty period shall only begin at the time when the defect becomes known; with goods which we usually keep packaged until the need them, this applies to damage that becomes known when taken out of the package, at which time the warranty period shall begin. The guarantee shall not affect our other contractual and statutory rights, especially those concerning warranty, compensation for damages and withdrawal from the contract. The warranty period shall be three years.

7.2 The supplier must be aware that we are not obligated to inspect the delivered goods and to report damages in every case. Section 377, Corporate Code (UGB) shall not apply.

7.3 The supplier must draw our attention to all risks which can be reasonably expected when using the product. Should the warranty come to be applied, the onus shall be on the supplier during the entire warranty period to prove that the defect was not present upon delivery. The supplier shall assume liability even for hidden defects in which case the warranty period begins only when we have full knowledge of the defect.

7.4 The supplier shall agree to a plant approval (pre-acceptance) of the goods at his plant in the presence of our final customer. In particular, pre-acceptance comprises the inspection of the goods for function, quality, performance/completeness and arrangement of components. With each plant approval, a pre-acceptance protocol is issued. Discovered defects other than minor defects must be remedied or rectified and specifications agreed upon in the pre-acceptance protocol must be implemented by the supplier before the goods are handed over to the customer.

**7.5** In any event, the risk is transferred to us only upon orderly unloading and acceptance at the destination specified by us, even when carriage-paid delivery was not agreed upon. If the delivered goods consist of a machine that is only installed at the destination, the risk is transferred to us only after proper installation has been verified after a test run.

**7.6** We shall have the option to require that the supplier shall quickly remedy defects at his expense and risk (repair, provision of missing items) and/or by exchange, or affect a price reduction or return the goods to the supplier at his expense and to declare rescission. If the supplier does not immediately meet his obligation to remedy or exchange, we shall also be entitled to have the defect repaired or have the missing items replaced by a third party at the supplier's expense and risk. Replacement parts must be delivered free of charge. The supplier must indemnify us against all costs and expenditures in this connection. If the same item is repeatedly delivered in defective condition, we are entitled to withdraw not only from the contract pertaining to the delivery in question, but from any delivery contract pertaining to the same or similar items (services). At the supplier's request, the defective items must be made available to him unless we require them for the purpose of evidence. This shall never affect our further-reaching rights and other rights, in particular those pertaining to the regular warranty.

**7.7** To the extent in which we are entitled to claim compensation for damages, our claim - regardless of the degree of the supplier's fault - shall also extend to lost profit and to compensation for all damages which we must pay to final customers or to other third parties.

**7.8** The supplier must indemnify us, our representatives, agents, executives and other employees, dealers and importers and all companies selling the goods and products in which the delivered goods are integrated, as well as their customers, against all claims, costs, damages and expenditures including legal costs involved, which are caused by claims for personal or physical damages based on actual or alleged lack and/or defect of the delivered goods, the violation of a provision of this delivery contract, the supplier or another illegal - also faultless - behaviour of the supplier.

**7.9** Should we encounter a claim based on a defect of the delivered goods, the supplier shall undertake to indemnify us against all third-party claims and to compensate us for all services we must render to third parties for such a purpose. He shall furthermore undertake to support us to the best of his ability in any legal action against third parties. If the supplier claims that a defect of the delivered goods or provided service as defined in the product liability regulations does not exist, he must provide proof thereof, also for us. These obligations by the supplier also apply if his product or service is only part of our service to a third party. In that case, the supplier shall undertake to compensate us for all the expenses we have encountered in such third-party action.

**7.10** The supplier must indemnify us, our representatives, agents, executives and other employees, dealers and all companies selling the goods and products in which the delivered goods are integrated, as well as their customers against all claims, costs, damages and expenses including legal costs involved, which are caused by claims based on any recall action for goods or products in which the delivered goods are integrated.

**7.11** In case of repairs (replacement deliveries, remedial action, etc.) to the delivered goods - also in case of an exchange of defective parts - the warranty and guarantee periods shall start over. At the same time, the guarantee of the total product shall be extended by the period in which the product could not be used because of the defect and its required remedial action.

**7.12** In case of defects or poor performance of any kind we shall always be entitled to hold back the entire residual purchase price or price of labour until the defect is remedied.

**7.13** The provisions agreed upon under this point shall also apply beyond the termination or completion of a delivery contract unless they have not been limited in time in an express arrangement.

**7.14** The supplier must take out insurance at his own cost with reliable and solvent insurance companies to cover his liability to the required extent toward us and toward third parties.

## **8. Product liability**

**8.1** If after our acceptance of the delivery, the delivered goods turn out to be defective as defined in section 5, Product Liability Act (PHG), and/or should we discover that the product's characteristics are no longer according to the state of the art in science and technology as defined in section 8, PHG, the supplier shall undertake to take back such goods and to refund the purchase price in full.

**8.2** Should we face claims against us under the PHG because of goods delivered by the supplier, the supplier shall undertake to provide us immediately at his expense with any evidence we require, in particular with quality control and inspection protocols, certificates, etc. In such a case, the supplier shall undertake - regardless of any fault - to compensate us completely for all our damages and disadvantages as well as compensate us for any court costs caused by our liability in this respect. The supplier shall undertake to take out an appropriate insurance as defined in section 16, OHG, whereby we reserve the right to demand proof of appropriate coverage from the supplier. Should the supplier fail to meet this obligation within 14 days, we shall be entitled to withdraw, and we can ask for compensation of damages including lost profits.

## **9. Spare parts**

Regardless of the term of the contract, the supplier shall undertake to provide us or our agents upon request with a

sufficient quantity of goods to be used as spare parts, namely for a period of 15 years after the end of delivery by the supplier, or for a shorter period of time explicitly requested by us. The supplier must ensure that all subcontractors are contractually obligated to honour this point in the present provisions

#### **10. Force majeure**

Every unforeseen circumstance and every case of force majeure that interferes with, delays or prevents the timely manufacture, delivery or our acceptance of the goods, such as government measures, war, strike or lockout, uprising, disruptions in operations or transportation, shortage or late allocation of raw materials and other elementary events shall entitle us without the requirement of having to set another deadline, to withdraw from the contract wholly or partially, to unilaterally reduce the agreed-upon volume of the order or to demand that the delivery or performance of the placed order be postponed to a later time without the supplier being entitled to claim compensation for damages of any kind whatsoever from us. This point shall not affect the rights of the parties arising from the other provisions in these GTC PURCHASING.

#### **11. Applicable law**

All legal transactions, especially those subject to these GTC PURCHASING, are exclusively subject to Austrian law with the exception of Austrian conflict of law rules referring to a foreign legislation. If in case of foreign involvement, Austrian law refers to the application of special international substantive rules in Austria as well - such as the controlled UN Convention on Contracts - these are not to be applied.

#### **12. Place of performance and jurisdiction**

Place of performance is the destination address stated on the order. Place of performance for payments is AT-4481 Asten, Upper Austria. Place of jurisdiction for all disputes arising from or in connection with the transaction - also in terms of notes and cheques - the competent court in Linz, Upper Austria, is agreed upon. However, GLOGAR reserves the right to file a law suit in any other jurisdiction, especially at the supplier's place of business.

#### **13. Miscellaneous**

**13.1** Should individual provisions of these GTC PURCHASING be wholly or partially ineffective, the other provisions shall remain in effect. The ineffective provision shall be replaced by another provision whose content and purpose comes closest to the ineffective provision. The headings contained in these GTC PURCHASING do not serve to interpret the regulations contained in the individual rules.

**13.2** The headings for the provisions contained in these GTC PURCHASING serve only the purpose of clarity and must not be used to interpret the provisions.