

General Purchasing Conditions for the Supply of Goods and Services (GPC)

of all companies of the BORSIG Group

1. General, scope of application

- 1.1 The following GPC shall form a fundamental part of the orders covering the supply of goods and services (jointly called "services"). They shall be applicable in relations with companies, public law bodies and public special assets (Contractors).
- 1.2 These GPC shall be applied exclusively. Purchaser only accepts adverse or deviating General Terms and Conditions of Contractor if he has expressly agreed with their application in writing. These GC shall also be applied if the Purchaser - fully aware of adverse or deviating General Terms and Conditions of Contractor - accepts or pays the services of the Contractor without reservations.
- 1.3 These GC shall also be applied for follow-up business provided, however, that business of similar type is concerned.
- 1.4 If, for a certain order, special arrangements are made which deviate from these GPC, these GPC shall be subordinated and applied additionally.

2. Offer, side agreements, unauthorized publicity

- 2.1 Offers, bids and cost estimates are binding and without any charge for Purchaser unless expressly otherwise agreed. Unless special arrangements are made in a specific case Purchaser does not bear any costs or expenses for visits, planning and other advances which the Contractor generates in the context of bidding.
- 2.2 Offers, conclusions of contract and orders on a standby basis must be in written form. Contractor is obliged to take the order within 14 days. Orders on a standby basis become binding if the Contractor fails to disagree within 3 working days after delivery of the respective order.
- 2.3 Oral side agreements as well as the exclusion, modification of and/or additions to these GPC shall require the express written confirmation of Purchaser to take effect.
- 2.4 The use of orders for reference and/or publicity purposes shall require the prior written approval of Purchaser.

3. Drawings, models, tools

- 3.1 Regarding all documents such as figures, drawings, models, samples, calculations, design drawings and other documents which have been made available or paid by Purchaser in the context of the order and/or for the performance of the order, his property and/ or copyright and/ or other industrial rights shall be reserved; said documents shall only be used for work required for the performance of the order and, without the express written approval of Purchaser, shall neither be reproduced nor made accessible or disclosed to third parties. On execution of the order they shall be returned to Purchaser without special request and free of charge. They shall be returned immediately to Purchaser in case Contractor does not take the order within the term specified in para 2.2 above. Contractor shall be liable to Purchaser for any damage caused by culpable contravention.
- 3.2 Intellectual property rights and rights of use regarding samples, cost estimates, calculations, drawings, documents and similar information, tangible and intangible, which have been developed by Contractor at Purchaser's instance, shall vest in Purchaser.
- 3.3 The obligation of confidentiality shall also be applicable after execution of the order. The obligation of confidentiality shall cease if and insofar the know-how and / or manufacturing know-how represented in the delivered documents such as figures, drawings, models, samples, calculations, design drawings and other documents have become public.

4. Responsibility for technical data

The Purchaser's approval of drawings, calculations and other documents shall not affect the sole responsibility of Contractor for the goods/ services sold. This shall also be applicable to proposals, recommendations and other contributions by Purchaser.

5. Inspections

- 5.1 Purchaser and/or his employees and/or third parties appointed by him and sworn to secrecy shall be granted access – to a reasonable extent and after prior appointment a time - to the manufacturing facilities of Contractor in order to check the status of manufacturing, use of suitable materials, assignment of the necessary specialized staff and execution of the ordered work according to the rules of the art. Insight in secret manufacturing process and other industrial secrets can be refused. Subcontractors are to be obliged accordingly.
- 5.2 Such inspections shall be carried out without any legal effect for possible acceptance; an inspection shall neither replace an acceptance nor restrict in any way the sole responsibility of Contractor for his services, in particular no

defence of contributory default of Purchaser may be derived from such inspections.

6. Spare parts

Contractor shall be obliged to make available spare and wear parts for every order for a period of at least 10 years after the end of the warranty period.

7. Transport of hazardous goods, identification of hazardous substances, packaging

- 7.1 It shall be up to Contractor to check before acceptance of the order whether the goods and/ or their components are classified as hazardous goods in their country of origin, country of destination and/ or all transit countries (e.g. paints, adhesives, chemicals or inflammable, oxidizing, explosive, combustible, toxic, radioactive, corrosive goods or those tending to self-heating). In such cases Contractor shall inform Purchaser without delay giving full details. He shall send Purchaser the necessary binding declarations legally required for shipment of such goods, in a correctly filled-in and duly signed form, at the latest with his written confirmation of order.

- 7.2 As regards packaging, identification and declaration of hazardous goods Contractor shall be obliged to observe the applicable national and international regulations, in particular

Sea freight	Hazardous Goods Ordinance - Sea IMDG Code
Air freight	UNICAO IATA RAR US-Dot
Rail transport	EVO/RID and Hazardous Goods Ordinance – Rail
Road transport	ADR and Hazardous Goods Ordinance – Road
General	Hazardous Substances Ordinance.

Possible deviating and/or supplementary national regulations of the respective country of destination shall also be observed provided that the country of destination has been given in the order.

- 7.3 Contractor shall be liable for all damage arising as a result of incorrect information in the binding declarations or failure to comply with existing rules when handling (packaging, shipping, storing, etc.) hazardous goods.

- 7.4 Contractor shall take back packaging material free of charge for Purchaser.

8. Export license

Contractor shall be obliged to immediately inform Purchaser in writing whether and to what extent state export licenses will be necessary or similar legal or official requirements have to be fulfilled for the order as a whole or part of it or whether they are subject to US export restrictions.

9. Prices, price quotation, terms of payment, delay

- 9.1 The agreed contract prices shall be binding. They shall be understood duty paid and packaging included, without legal value-added tax.

- 9.2 Unless expressly otherwise agreed in writing, the prices shall be understood FCA (designated place) in accordance with INCOTERMS applicable at the date of contracting.

- 9.3 Invoices have to be rendered in one original and at least one copy and have to fulfil all requirements of the law. The term of payment starts after receipt of the proper invoice, but not before the taking delivery of the goods or services without reservation. Unless expressly otherwise agreed payment shall be effected within 30 days after receipt of the invoice less 3 % discount or within 45 days, net.

- 9.4 In the event of instalment payments being agreed, receipt of the invoice shall be the sole criterion for the beginning of the term, unless the performance of certain services and/ or the provision of securities have been agreed as pre-requisites.

Invoices for services which Purchaser has committed to a third party, with the knowledge of Contractor, shall only be due and payable when and to the extent to which Purchaser has received compensation for the services or parts thereof from said third party. In the event that Purchaser has provided a security to said third party because of possible defects, this shall only be valid if Contractor provides a security of the equivalent amount to Purchaser. Possible instalment payments shall not release Contractor from his obligation to show and charge all services in an itemized final invoice.

- 9.5 Payments of Purchaser shall in no case mean an acknowledgment of perfect performance according to the rules of the art in the sense of an acceptance.

10. Offsetting, right of retention, group clearing

- 10.1 Purchaser shall be entitled to offsetting and retention rights in the legal extent.

- 10.2 Purchaser shall also be entitled to offsetting and retention rights regarding such claims against companies which are related with Contractor in the sense of Art. 15 AktG (German Stock Corporation Law).

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10.3 Disputes regarding the amount to be paid to Contractor shall not entitle Contractor to stop his services as a whole or in part, not even temporarily.

11. Delivery period, delayed delivery

11.1 The delivery period given in the order shall be binding. Early deliveries and/or part deliveries shall require the express written approval of Purchaser.

11.2 Contractor shall be obliged to inform Purchaser without delay in writing in the event that circumstances should occur or become visible as a result of which it will not be possible to observe the delivery period. In this connection Contractor has to inform the Purchaser about the reason and the estimated duration of the delay.

11.3 Purchaser shall be entitled to request, besides fulfilment, a contractual penalty of 0.2 % of the total contract price, net, for each working day of deferment, however, without exceeding a total of 5 % of the total contract price, net. Assertion of further claims due to delay (including the right to revoke the contract and/or claim damages instead of performance of work) shall not be excluded by this. The right of Purchaser to claim the contract penalty shall continue until final invoicing / payment even if this has not been reserved at the time of acceptance of the work.

11.4 Moreover, irrespective of his other rights at the end of a reasonable grace period granted by him in the event that, as a result of the delay, the work is no longer of interest to him, or in case of imminent danger or in order to avoid further damage, Purchaser may have the work, not yet performed by Contractor, carried out by a third party at the expense of Contractor.

In any case of substituted performance by Purchaser, Contractor shall, at his expense, provide all information required for this purpose to Purchaser and deliver the documents in his possession and, in case of possible own industrial rights of third parties in such documents, procure appropriate rights of use to the extent required for said substituted performance and/ or indemnify Purchaser without delay for claims under said rights of third parties. With the conclusion of this contract Contractor shall agree to the use of his industrial rights in the event of substituted performance of work by Purchaser or third parties contracted by him.

The claim to payment of the contract penalty already arisen by the time of award of the contract to said third party shall be fulfilled in any case.

12. Assignment of claims

Claims against Purchaser may only be assigned with his prior consent in writing. This shall not be applicable to claims covered by an extended reservation of title. Art. 354a HGB (German Commercial Code) shall remain unaffected.

13. Passage of risk

Contractor shall bear the risk in accordance with the terms of delivery agreed in line with para 9.2.

14. Documents

Contractor shall be obliged to give the order number of Purchaser as well as the contractually agreed identifications on all shipping papers and/or delivery notes, otherwise possible consequences (e.g. delays, extra costs) shall solely be borne by him.

15. Warranty for defects, notice of defects

15.1 Contractor shall warrant that his services comply with the recognized rules and the latest state of engineering as well as the standards, regulations and codes applicable in the country of Contractor and in the country of destination (including safety, labour protection, and accident prevention regulations), have the agreed qualities, the guaranteed characteristics and besides are free of fault and deficiencies in title.

15.2 Purchaser shall perform an incoming inspection only with respect to evident defects, transport damages, completeness and identity of the goods. Purchaser shall lodge a claim of these defects without delay. Purchaser reserves the right to perform an incoming inspection going beyond. Further, Purchaser shall lodge a claim of defect as soon as the defect has been detected according to the conditions of the ordinary course of business. Insofar Contractor waives his objection of a delayed notice of defect.

15.3 Purchaser shall be entitled to the legal warranty claims without any restrictions.

In any case Purchaser may, at his discretion, request Contractor to repair deficiencies or provide replacement; Contractor shall bear all expenses required for the repair of deficiencies or the provision of replacement.

15.4 After granting a reasonable grace period and after due information of Contractor, Purchaser shall also be entitled to repair deficiencies himself, at the

expense of Contractor, in case of imminent danger or special urgency or performance failed or if this appears appropriate to reduce damage.

15.5 In the event that Purchaser should be entitled according to the above para 15.4 to repair the deficiencies himself, para 11.4 shall be applicable regarding the obligations of Contractor.

All costs incurred at the Purchaser in conjunction with the repair of deficiencies, especially for dismantling, installation, travelling, freights, packaging, insurance, customs duties and other public duties, inspections and technical acceptance, job performance, material or costs for an incoming inspection going beyond the ordinary extent, shall be borne by Contractor.

15.6 The claims of Purchaser for deficiencies shall be statute-barred, unless otherwise agreed in writing, within 36 months of the passage of risk (para 13). If the work is intended for a building and it has caused its deficiency, the limitation period shall be 5 years. Longer legal limitation periods shall remain unaffected; Art. 438 para 3, 479 and 634a para 3 BGB (German Civil Code) shall equally remain unaffected.

15.7 Does the Contractor fulfil his warranty obligation by providing replacement the limitation period for the replaced good starts to run again from the delivery of the replaced good.

16. Product liability, indemnification, insurance cover

16.1 Provided that Contractor is responsible for a product defect or infringement of legal/official safety regulations, he shall indemnify Purchaser, on first request, for possible claims of damages by third parties, in case the cause comes from the domain and organisational area of the Contractor and he is liable for towards third parties. Within this limit Purchaser shall be entitled to reimbursement of all expenses incurred by Purchaser, in particular in conjunction with recall actions caused by him as a result thereof; Purchaser shall inform Contractor in advance of the type and scope of recall actions, as far as possible and reasonable, and shall give him opportunity to make representations. Further legal claims shall be reserved.

16.2 This shall apply accordingly in the event that product defects are attributable to work of sub-contractors or sub-suppliers of Contractor.

16.3 Contractor shall be obliged to maintain sufficient insurance cover for product liability during the term of contract and to furnish at any time written proof to Purchaser on his request, especially by written confirmation of the insurer of Contractor.

17. Liability for environmental damage

Contractor shall be liable for all damage caused in conjunction with his services by infringement of environmental protection provisions (such as emission protection law, used oil and water management law, waste removal law and/or related ordinances issued). In this conjunction he shall indemnify Purchaser, on first written request, for all possible claims of damages of third parties. Moreover, he shall respond for the damage caused to Purchaser.

18. Industrial rights

Contractor shall guarantee that no rights of third parties will be infringed in conjunction with the performance of the orders. In the event of any claims being put forward by third parties, Contractor shall indemnify Purchaser for all such claims, provided, however, the Contractor is liable for the infringement of the third party's right. The obligation of indemnification shall also refer to all expenses necessarily incurred by Purchaser and/ or in conjunction with such claims.

19. Subcontracts, partial ineffectiveness

19.1 Contractor shall require the prior written approval of Purchaser for the exercise of retention rights against his subcontractors.

19.2 To avoid the exercise of retention rights on the part of subcontractors of Contractor, Purchaser shall be entitled to effect direct payments to subcontractors which, in the relationship with Contractor, shall be deemed payments instead of performance provided they refer to justified claims of the subcontractor. Justified claims of the subcontractor against Contractor as used in the above sentence shall also include claims regarding the existence of which Purchaser was mistaken in good faith.

19.3 In any case third parties, in particular sub-suppliers and subcontractors, to whom Contractor resorts for the fulfilment of his obligations under the order or who are involved by him in conjunction with his services, shall be deemed agents of Contractor.

19.4 If a contractual provision is or becomes ineffective / void or not feasible in whole or in part for reasons of the right of the general terms and conditions according to §§ 305 through 310 BGB, the legal regulations will apply.



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If a current or future contractual provision is or becomes ineffective / void or not feasible in whole or in part for reasons other than the right of the general terms and conditions according to §§ 305 through 310 BGB, the validity of the remaining contractual provisions will remain unaffected unless the performance of the contract - also in consideration of the following regulations - would place undue hardship on one of the parties. The same applies if a gap requiring supplementation results after the conclusion of contract.

Contrary to the principle of the jurisdiction of the Federal Supreme Court of Germany, according to which a severability clause solely reverses the burden of proof, the effectiveness of the remaining contractual provisions shall be maintained at all events and therefore, § 139 BGB (Partial nullity) shall be waived altogether.

The parties will replace the, for other reasons than the provisions with regard to the right of the general terms and conditions according to §§ 305 through 310 BGB, ineffective / void or not feasible provision or gap requiring supplementation with an effective provision, which corresponds to the ineffective / void / not feasible provision and the overall purpose of the contract in its legal and economic content. § 139 BGB (Partial nullity) is expressly excluded. If the invalidity of a provision is based on an amount of the service or time (date or deadline) specified therein, the provision must be agreed with a legally allowed amount which comes closest to the initial amount.

20. Place of performance

The place of performance for services of Contractor shall be the agreed place of use, the place for payments of Purchaser shall be his registered office.

21. Jurisdiction, applicable law

- 21.1 Provided that Contractor is a fully qualified merchant, a public law body or public special asset, the place of jurisdiction for all kinds of procedures shall be the registered office of Purchaser; Purchaser may also proceed against Contractor at the general place of jurisdiction of Contractor.
- 21.2 The law of the Federal Republic of Germany shall exclusively be applicable to the legal relations of German contracting partners; possible application of the UN Law on the International Sale of Goods (CISG) shall be excluded.