

GTCP-M&E – General Terms and Conditions of Purchase for Machinery and Equipment of the company Rack & Roll GmbH and AQS Logistic Systems GmbH

1. General

- 1.1 These Terms and Conditions of Purchase for Machinery and Equipment ("**GTCP-M&E**") shall apply exclusively to all business relations with our business partners and suppliers (collectively referred to as "**Contractor**") concerning the procurement of machinery and mechanical equipment including further necessary services in this context (e.g. assembly, installation work and commissioning), irrespective of whether the Contractor manufactures these itself or purchases them from suppliers (collectively also referred to as "**Machinery and Equipment**").
- 1.2 We do not recognise any deviating, conflicting or supplementary contractual terms and conditions of the Contractor unless we have expressly agreed to their validity in writing. We hereby expressly reject any counter-confirmations by the Contractor with reference to contractual terms and conditions. The GTCP-M&E shall also apply if we accept the delivery without reservation while being aware of deviating, conflicting or supplementary contractual conditions of the Contractor.
- 1.3 These GTCP-M&E shall also apply as a framework agreement to all future contracts with the Contractor for the supply of machinery and equipment without our having to refer to them again in each individual case.
- 1.4 Individual agreements made with the Contractor in writing in individual cases (including ancillary agreements, supplements and amendments) shall always take precedence over these GTCP-M&E.

2. Contract components

- 2.1. Parts of the contract are - in case of contradictions not resolvable by way of interpretation - in the order stated:
 - Our purchase order/contract document with any specifications including preliminary remarks
 - These GTCP-M&E
 - The general and particular (technical) regulations, Directives and standards applicable to the agreed services at the time of conclusion of the contract, such as TÜV, VDI, IEC/EN (International Electrical Commission/European Standard), VDE, DIN, UVV (accident prevention regulations), TRD (Technical regulations for steam boilers), TA-Luft (Technical Instructions on Air Quality Control) and all other applicable Directives and Regulations, in particular the Machinery Directive 2006/42/EC, the EMC Directive 2014/30/EU and the Low Voltage Directive 2014/35/EU.

3. Quotation / Quotation Documents / Conclusion of Contract

- 3.1. Quotations from the Contractor shall be free of charge for us.
- 3.2. The Contractor shall confirm each purchase order within a period of 2 weeks, stating the binding price and the binding delivery time. Any contractual terms and conditions of the Contractor contained in the confirmation or references to such are expressly rejected (cf. clause 1.2).
- 3.3. We shall be entitled to revoke the purchase order until it has been accepted by the Contractor. The Contractor shall indicate obvious errors (e.g. spelling and calculation errors) and incompleteness of the purchase order including the order documents to us for the purpose of correction and/or completion before conclusion of the contract.
- 3.4. We retain ownership and copyrights to illustrations, drawings, calculations and other documents; they may only be used for processing our purchase order and may only be made available to third parties with our written consent, even after termination of the contract. The confidentiality obligation shall not expire until and insofar as the knowledge contained in the provided documents has become generally known. After the order has been processed, they must be returned to us without being asked.

4. Scope of supply and services / execution / subcontractor

- 4.1. The agreed remuneration shall cover all services which the Contractor must perform in order to fulfil its performance obligation.
- 4.2. Unless otherwise agreed, the scope of supply and services shall particularly include the following:
 - The delivery and the ready-to-operate assembly of all parts of the machinery and equipment at the agreed installation site including the coordination and execution of the necessary tests and test certificates, the commissioning and the test operation up to the acceptance (in each case carriage paid, customs cleared and taxed).
 - Compliance with the relevant technical and other regulations and findings for the services, including the regulations for occupational safety and environmental protection.
 - The CE marking, the Declaration of Conformity in the case of machinery or equipment ready for use or the Declaration of Incorporation in the case of partly completed machinery or equipment.
 - All design documents, documentation, operating instructions in accordance with the technical specification or separate agreement that are part of the machinery or equipment that is safe to operate and ready for operation.
 - Theoretical and practical instruction/training of our operating and maintenance personnel with regard to the function and operation of all system components.
 - The Contractor shall be obligated to ensure the availability of the components and spare and wear parts required for the operation of the machine or system for a period of ten years. If this is unreasonable for the Contractor, the Contractor may fulfil this obligation by naming a suitable supplier who will ensure the availability of the components.
- 4.3. Function tests as well as all regulatory and legally required tests shall be carried out in coordination with us and at the expense of the Contractor.
- 4.4. During the processing of the purchase order, the contractor shall take all measures that are necessary to achieve the contractually required success, even if these have not been expressly stated within the scope of the placement of the purchase order. These particularly include:
 - Procurement of all required equipment, auxiliary materials and facilities carriage paid to the installation site.
 - Cleaning up the site and restoring it to its original assembly plan condition.
 - Disposal of waste generated during the performance of the contract.
 - Adequate lighting at the work site.
 - Securing work areas against accidents, damage, theft and similar.
- 4.5. The Contractor shall show the greatest possible consideration for our work processes when carrying out work to be performed in our factory area during production times. Disruptions and obstructions shall be minimised.
- 4.6. The use of subcontractors requires our prior consent.

5. Deadlines / Delay in delivery / Contractual penalty

- 5.1. The agreed delivery dates are contractual deadlines
- 5.2. The Contractor may not invoke delivery difficulties due to a strike, lockout, or due to the effects of the Covid 19 pandemic or the Ukrainian war, regardless of whether they occur at the Contractor or one of its suppliers. The Contractor may only invoke the absence of necessary information and/or documents to be supplied by us if it has not received the information and/or documents despite a reasonable deadline being set. § 313 BGB (German Civil Code) and § 280 para. 1 sentence 2 BGB remain unaffected.

- 5.3. Without prejudice to further claims, in such cases and in cases of delay in delivery or performance due to force majeure, we shall be entitled to set a reasonable grace period immediately at our reasonable discretion. The Contractor shall confirm the new delivery deadline in writing.
- 5.4. The date of readiness for acceptance shall be decisive for compliance with a delivery date.
- 5.5. In the event of delayed delivery or performance and in the event of default, we shall be entitled to the statutory claims in each case. No limitation or exoneration of the Contractor's liability is agreed. Acceptance of the delayed delivery does not constitute a waiver of compensation claims. The provisions in clause **Fehler! Verweisquelle konnte nicht gefunden werden.** remain unaffected.
- 5.6. As soon as the Contractor anticipates that it will not be able to meet agreed delivery dates, the Contractor shall notify us immediately, stating the reasons and the expected duration of the delay.
- 5.7. In the event of a delay with a delivery date, the Contractor shall be obligated to pay a contractual penalty in the amount of 0.25% of the justified net order total per working day, but in total not more than 5% of the justified net order total; further legal claims (in particular withdrawal and further damages) shall remain reserved. The contractual penalty shall be offset against damage caused by delay.

6. Assembly / commissioning / test operation / acceptance

- 6.1. Completion of the machinery and equipment includes assembly, commissioning and test operation. Formal acceptance then follows.
- 6.2. The completion of the assembly work shall be notified to us in writing. After notification of the end of assembly, we may request a joint inspection of the machinery and equipment. A report of the inspection is made, in which the completion of the assembly is noted. Any defects and remaining work shall be recorded in the report. The report should be signed by both Parties. However, neither the inspection nor the signing of the report shall have any effect on acceptance or rejection.
- 6.3. The commissioning takes place after the assembly has been completed. This includes all checks, adjustments, test runs and inspections of machinery and equipment parts and systems that are necessary to achieve functional capability after completion of assembly. Readiness for commissioning shall be notified to us in writing without delay. The date for commissioning shall be determined by mutual agreement. However, it must take place no later than 5 working days after the end of the assembly according to clause **Fehler! Verweisquelle konnte nicht gefunden werden..**
- 6.4. Test operation must be carried out for an appropriate period of time after successful commissioning. Unless otherwise agreed by the Parties, the test operation shall have a duration of at least 10 working days. The Contractor shall notify us about its readiness for test operation in writing without delay. If any malfunction occurs during the test operation which interrupts or substantially restricts the test operation, the test operation shall be extended by the duration of such disruption, unless the Contractor is not responsible for such malfunction. The test operation shall be interrupted and shall be repeated if it has been interrupted or substantially restricted by more than 3 malfunctions or if the total of interruption times or substantial restrictions due to malfunctions reaches more than 3 working days, unless the Contractor is not responsible for these malfunctions. If the test operation is aborted, the agreed test operation period shall start anew after the cause of the malfunction has been eliminated. The Contractor shall keep a record of the progress and completion of the test operation, which shall be signed by both contracting parties. Neither the completion of the test operation itself nor the signing of the report shall have any effect on acceptance or rejection.
- 6.5. Unless otherwise agreed, commissioning and test operation shall be carried out under the supervision and responsibility of and at the expense of the Contractor. If the Contractor makes changes to the machinery or equipment or its mode of operation in the meantime, these shall be documented by the Contractor and notified to us without delay.
- 6.6. After completion according to clause **Fehler! Verweisquelle konnte nicht gefunden werden.** (assembly, commissioning and successful test operation), we shall accept the complete performance of the contract. The acceptance shall be exclusively formal. Implied acceptance is ruled out. However, the fictitious acceptance remains unaffected. A record of the acceptance shall be made and signed by both Parties.

7. Liability for defects / agreed condition / inspection for defects

- 7.1. The Contractor shall comply with established engineering practice, safety regulations and the relevant technical standards and data for the machinery and equipment.
- 7.2. The Contractor warrants that the machinery and equipment delivered by it comply with the statutory provisions of the Federal Republic of Germany as well as those of the respective countries of destination of the end products, if any, specified in the purchase order with regard to their condition, composition, quality, packaging, declaration and goods specification.
- 7.3. The supplied machines and equipment must be suitable for 3-shift operation without restrictions.
- 7.4. In addition to the quality characteristics regulated in clauses 7.2 and 7.3, those product descriptions which - in particular by designation or reference in our purchase order - are the subject matter of the respective contract or have been included in the contract in the same way as these MuA-EKB shall always be deemed to be an agreement regarding the quality. It makes no difference whether the product description originates from us, from the Contractor or from third parties.
- 7.5. The limitation period for defects is 36 months, calculated from the date of acceptance. This shall not affect longer statutory limitation periods.

8. Liability / damages

- 8.1. We shall be liable to the Contractor for damages or reimbursement of wasted expenses in the event of intent and gross negligence in accordance with the statutory provisions. Otherwise, we shall only be liable for slight negligence in the event of a breach of a contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractor may regularly rely (so-called cardinal obligation), and this shall be limited to compensation for the foreseeable and typical damage.
- 8.2. Our liability for damages arising from injury to life, body or health and according to the Product Liability Act shall remain unaffected by the above limitations and exclusions of liability in clause 14.2; in this respect, the statutory provisions shall apply.
- 8.3. No limitation or exoneration of the Contractor's liability is agreed.

9. Performance changes / termination

- 9.1. §§ 650b and 650c of the German Civil Code (BGB) shall apply mutatis mutandis to performance changes, but subject to the following proviso: the Contractor shall submit a verifiable quotation for the additional or reduced costs to us in text form within one week of receipt of the request for change. If this is not possible, the Contractor shall notify this without delay. A reasonable time limit shall then apply.
- 9.2. We shall be entitled to immediately order a change necessary to achieve the agreed success of the work (§650b para. 1 no. 2 BGB) if we are threatened with serious disadvantages without immediate implementation or if the Contractor finally and seriously refuses a change.
- 9.3. §§ 648 ff. BGB apply to terminations.

10. Declaration of origin characteristics

- 10.1. The Contractor shall be obligated to enable the verification of the proofs of origin by the Customs Administration and to provide both the information required for this purpose and any confirmations and evidence that may be required.
- 10.2. The Contractor shall further be obligated to compensate for any damage caused by the fact that the declared origin is not recognised by the competent authority due to a lack of certificates or a lack of verification possibilities, unless the Contractor is not responsible for this.

11. Securities

- 11.1. Any advance payments to be expressly agreed shall not become due until 2 weeks after the repayment of the advance payment has been secured by the provision of a guarantee for the same amount of the gross amount according to clause 11.4.
- 11.2. In order to secure our claims for performance of the contract against the Contractor, we shall be entitled to demand a contract performance guarantee according to clause 11.4 in the amount of 10% of the net order total. Until the handover of the contract performance guarantee, we shall be entitled to realise the security requirement by means of retentions, namely until the security has been achieved. The contract performance security is used to secure our claims for performance of the contractual services and for damages (in each case including interest) including the contractual penalty until acceptance as well as for the repayment of payments. Claims secured by the security for claims based on defects according to clause 11.3 - or any advance payment guarantee according to clause 11.1 - are not covered by the contract performance security.
- 11.3. In order to secure claims for defects after acceptance, including all claims for payment and damages in connection with defects after acceptance, we shall be entitled to retain 5% of the justified net final invoice total after acceptance of the performance for services rendered. The retention may be redeemed by the Contractor concurrently with the provision of a warranty bond of the same amount according to clause 11.4. The security shall be provided for 3 years after acceptance. Claims before acceptance are expressly not secured by the security for claims for defects.
- 11.4. The following provisions shall apply in each case to the securities according to the clauses 11.1, 11.2 and 11.3: there is no obligation to deposit the security in a blocked account. The rights of the Contractor to effect the respective securities alternatively by depositing money shall remain unaffected. A guarantee shall be directly enforceable and irrevocable, but not on first demand. It must be issued unconditionally, for an unlimited period of time, waiving the defence of unexhausted remedies (§ 771 BGB). The Contractor shall bear the costs of the guarantee. The guarantee shall be subject to the law of the Federal Republic of Germany and must have Cologne as its exclusive place of jurisdiction. A suitable guarantor can only be a bank domiciled in Germany or a public law credit institution domiciled in Germany or a credit insurer domiciled in Germany. The Contractor shall bear the costs of the security. The Contractor shall select whether the respective securities shall be provided by way of guarantee or retention or deposit.

12. Insurance of the Contractor

- 12.1. The Contractor shall obtain or maintain public liability insurance from an insurance company for the duration of the contract until the expiry of its warranty period, which insurance shall be subject to inspection by the Federal Supervisory Office for Insurance. On request, this must be proven by presentation of a corresponding confirmation.

The insurance cover must include all damages, including indirect and third-party damages as well as preliminary and delayed damages per individual claim up to the amount of EUR 5 million for personal injury and EUR 5 million for other damages.

- 12.2. If the Contractor is in default with the fulfilment of its obligations according to clause 12.1, we shall be entitled, after unsuccessfully setting a grace period, to obtain appropriate insurance ourselves at the expense of the Contractor, to withhold payments in the amount of the missing insurance cover or to terminate the contract for an important reason. The right to claim damages shall remain unaffected in each case.

13. Provided substances and materials

- 13.1. Substances and material (e.g. software, finished and semi-finished products) as well as for tools, templates, samples and other objects which we provide for the purpose of manufacturing and/or machining/processing shall remain our property regardless of the type and scope of the Contractor's performance and shall be stored for us at the Contractor's expense and risk (separately while they are not processed) and insured to a reasonable extent against destruction and loss. The provisions in clause **Fehler! Verweisquelle konnte nicht gefunden werden.** apply accordingly.

14. Invoicing / payment terms

- 14.1. Invoices must be submitted in duplicate or in electronic form, quoting the job number and the purchase order number. The Contractor shall be responsible for any delays arising due to non-compliance with these obligations, without this being our responsibility.
- 14.2. The Contractor's payment claims shall become due 30 days after receipt of the contractual invoice.
- 14.3. We shall be entitled to deduct a discount of 3% insofar as we settle invoices within 14 calendar days after receipt of the contractual invoice. For clarification: it is not necessary that the respective performance is complete or that all performances are made within the discount period; discount is granted in each case on the part of an invoice that is performed in due time within the discount period.
- 14.4. Payment and discount periods shall run (except in the case of advance payments to be agreed separately in writing) from receipt of the contractual invoice, but not before acceptance of the machinery and equipment.
- 14.5. Compliance with the discount period according to the above clause 14.3 depends on the completion of the payment transaction (time of instruction of payment) by us and not on the receipt of the payment by the Contractor.
- 14.6. We do not owe maturity interest. The statutory provisions shall apply to late payment.

15. Set-off / assignment / right of retention

- 15.1. We shall be entitled to offset any counterclaim against claims of the Contractor.
- 15.2. Offsetting by the Contractor with counter claims is excluded, unless the claims are undisputed or have been legally established or are in a reciprocal relationship (§ 320 BGB).
- 15.3. The Contractor shall only be entitled to exercise the right of retention insofar as its counterclaim is based on the same contractual relationship, is undisputed or has been legally established.
- 15.4. The assignment of a claim against us to a third party is excluded unless we have expressly agreed to this in writing or a case of § 354a, para. 1, sentence 1 HGB (German Commercial Code) exists.

16. Prices / price increases

- 16.1. The prices shown in the purchase order are binding. Unless otherwise agreed in individual cases, the prices shall include all services and ancillary services of the Contractor (e.g. delivery, assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including transport and liability insurance) according to clause 4.1. A sliding price regulation for wages, material, equipment and substance costs is not agreed.
- 16.2. Unless otherwise stated, the statutory VAT is included in the price.
- 16.3. Price increases after conclusion of the contract are excluded. § 313 BGB remains unaffected.

17. Industrial property rights

- 17.1. The Contractor warrants that the machinery and equipment are free from third party rights, in particular that there are no third party property rights or domestic or foreign industrial property rights which could be infringed by the delivery to us or by any use, resale or further processing of the machinery and equipment by us or third parties.
- 17.2. In the event that third parties assert such rights to the machinery and equipment, the Contractor shall – without prejudice to any further rights on our part – be obligated to clarify the justification of the asserted claims without delay in consultation with us.

- 17.3. If claims are asserted against us by a third party, the Contractor shall be obliged to indemnify us against such claims upon first written request; we may only assert claims of the third party against the Contractor arising from agreements or settlements insofar as the Contractor has consented thereto or insofar as legal claims of the third party are covered.
- 17.4. The obligation to indemnify on the part of the Contractor shall also apply to all expenses necessarily incurred by us as a result of or in connection with the claim by a third party.

18. Place of jurisdiction / place of performance / choice of law / severability clause

- 18.1. The exclusive place of jurisdiction for all disputes arising from or in connection with our contractual relationships with the Contractor is Cologne, Germany.
- 18.2. Unless otherwise stated in the purchase order, our registered office in Kulmbach (Rack & Roll GmbH) or Neunkirchen (AQS Logistic Systems GmbH) shall be the place of performance.
- 18.3. These terms and conditions, as well as the entire legal relationship between the Contractor and us, shall be governed by the laws of the Federal Republic of Germany, with the exclusion of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.4. If one or more provisions of these Terms and Conditions of Purchase is/are become(s) invalid, the validity of the other provisions shall not be affected.