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Kappa Filter Systems GmbH
GENERAL CONDITIONS OF PURCHASE
(GCP)

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Kappa Filter Systems GmbH
Im Stadtgut A1
A-4407 Steyr-Gleink
AUSTRIA

E-Mail: office@kappa-fs.com
Web: www.kappa-fs.com
Tel.: +43 7252-21111-500

1. DEFINITION OF TERMS

The following definitions apply in these General Conditions of Purchase - GCP.

Company	Kappa Filter Systems GmbH with headquarters in A-4407 Steyr-Gleink, Im Stadtgut A1, Austria (hereinafter called company)
Contractor	legal person legally binding by order (hereinafter called contractor)
Order	contract between the company and the contractor concerning supplies and/or services provided by the contractor
Documentation	all agreed commercial, logistic, technical and other information in written, graphic and electronic form
Audit team	assessment staff of the company or its representative
Location	location of the proper execution of the intended performance in accordance with the order; these are places/countries where the ordered shipment or services are delivered/performed.
Further definitions	
End of installation	proper completion of the installation
Start of implementing	
a.) Cold test	the cold test is considered to have been completed when the entire installation, without operating media, has been checked in single and in full sealing operation etc. and all plants, plant parts, operating and safety equipment etc. have been checked for their function or set to the nominal values. Furthermore, all control loops must have been checked for their function and pre-adjusted.
b.) Hot test	starting up the entire system with operating media
End of implementing	positively completed cold test and hot test of the entire system
Trial operation	operating the entire system under operating conditions
Proof of performance	performance test of the entire system with a continuous full load over an agreed period
Positive Proof of performance	achievement of all contractually agreed and/or guaranteed performance data and function parameters and assurance of continuous operation in accordance with the company's specifications
Standard parts	standard parts are standardized products whose technical characteristics are subject to standardization. Standard parts are specified, standardized products that are often used.

All references to laws, standards etc. contained in this document and, if necessary, in other parts of the order are to be taken to mean the respective valid edition, unless expressly stated otherwise.

2. GENERAL

Area of application

- 2.1. These General Conditions of Purchase (GCP) govern transactions between the company and the contractor.

Any purchase conditions of the contractor are expressly and entirely excluded. These apply only if expressly accepted by the company in writing.

The mere reference to general terms and conditions of business/sales or other contractual forms on the part of the contractor during the preparation or completion of the order also does not constitute acceptance of such conditions on the part of the company, even without express rejection of same.

The following provisions governing the supply of goods shall apply mutatis mutandis to services.

- 2.2. The contractor is deemed to have accepted the company's GCP at latest upon starting processing of the order.

Legal obligation

- 2.3. Offers on the part of the contractor shall apply only if they are expressly confirmed by the company as the basis for orders. If the company's ordering documents refer to offer documents, these apply in case of doubt solely with regard to technical specifications. On no account do they constitute acceptance of the contractor's general terms and conditions of business/sales or other contractual forms.

- 2.4. Legally binding orders are placed without exception in writing by the company's Purchasing Department, by fax or e-mail. The contractor can invoke changes, supplements and/or additions to the order including attachments only if these had been accepted by the company's Purchasing Department and expressly confirmed in writing. This general requirement for the written form can be waived only by a written agreement. If orders, changes, supplements or additions have been made by other means or if it is not absolutely clear that these have been made in consultation with the company's purchasing department, the contractor is obliged to immediately and verifiably inform the company's Purchasing Department and to obtain an express written confirmation, failing which the company shall be entitled to reject aforesaid statements/declarations of will as non-legally binding. Any direct or indirect costs/disadvantages resulting therefrom shall be borne solely by the contractor.

- 2.5. Employees of the contractor, who make declarations to the company, are deemed to be fully legitimated to do so.

- 2.6. If the contractor had already signed a negotiation protocol prior to the company drawing up an order, the conditions and undertakings on the part of the contractor contained therein shall apply and a rejection of the order on the part of the contractor is no longer possible. The order placed by the company under the conditions contained therein is deemed to have been accepted in full on commencement of the execution of the order by the contractor, but at the latest within 5 days after the dispatch of the order.

Ranking

- 2.7. In case of contradictions and deviations, the documents apply according the following ranking:
- negotiation protocol
 - written order requirements including a list of ordering principles
 - General Conditions of Purchase (GCP) in the latest valid edition
 - inquiry documents
 - technical part of the contractor's offer

3. PARTICULAR DUTIES OF THE CONTRACTOR

General

- 3.1. The laws and stipulations in the country of the company and in the country of order execution, especially with regard to environmental and labor laws and technical norms, standards, taxes and duties, permits, customs, registration, etc., must be complied with by the contractor unless specified otherwise. The same applies to corresponding European legal requirements (directives, regulations, etc.).
- 3.2. The contractor's supplies and/or services will become part of a complete system to be installed by the company or an existing system or a product of the company. On account of the high importance of the supplies and/or services, therefore, the contractor is obligated to extraordinary care beyond the usual degree in executing the order. If it should be necessary during the course of the performance to change other parts of the system or components, the contractor is obliged to inform the company of this promptly in writing and to obtain the latter's written approval.
- 3.3. If the contractor claims culpability of the company regarding the breaching of contractual obligations, he must prove it.

Contact persons

- 3.4. The names of the contractor's employees (and those of his important suppliers) in the Technical, Logistic (inspection, control, dispatch, packaging) and Sales Departments must be informed to the company in writing immediately upon receipt of the order. The responsible contact persons of the company are named in the order and/or the appendices to the order.

Quality assurance

- 3.5. In executing their supplies and/or services, the contractor and his subcontractors are obliged to comply at least with the minimal requirements of the relevant quality management and environmental management standards such as ISO 9001 revision 2008, ISO TS 16949 (applicable to automotive suppliers/subcontractors) or ISO 14000ff and/or EMAS. They must prove their complete fulfillment by providing current certificates issued by certification authorities who are authorized to do so. The company reserves the right to examine (audit) the quality and environmental management system of the contractor and his subcontractors at any agreed time and if necessary to demand appropriate corrections and preventative measures.

Completeness of the contractually agreed supplies and/or services

- 3.6. As professional companies, the contractor and his subcontractors are obliged to fulfill the contractually agreed supplies and/or services and any related contractual obligations fully and in an orderly manner and in accordance with the state of art, regardless of whether all necessary supplies and/or services or information are listed in detail in the technical specifications of the order, in order to guarantee a flawless execution, installation and satisfactory continuous operation.

The contractor must promptly inform the company of any contradictions/errors which he finds in the technical specification of the order and, if necessary, must propose appropriate measures/recommendations to eliminate same.

Completeness shall also be taken to mean in particular that the function and performance, as well as the integration capability of the supplies and/or services ordered are guaranteed for the intended purpose under the operating conditions expected at the place of use (particularly with regard to the integration into a complex entire plant or product), influences, safety regulations, applicable standards and official regulations, etc.

- 3.7. The complete scope of supply and/or services also includes the documentation and ancillary services, as well as preparatory activities and other supplies and/or services which are necessary in order to obtain the desired properties, in particular to ensure the performance of the items ordered, even if such supplies and/or services are not explicitly specified.
- 3.8. At the request of the company, the contractor shall provide, free of charge, all delivery items/articles, accessories, spare parts and consumables and all subsequent supplies thereof, as well as and in particular the documentation and other documents accessible to the company, such as delivery notes and training materials, with the company's brand name or branding in accordance with the design manual and shall completely remove his own company name and/or product or brand names.
- 3.9. The contractor is obliged to obtain and to take into account all information that determines and could influence the plant, environmental or process conditions for its supplies and/or services in the country of the company as well as country of use, as well as that which is necessary for the fulfillment of the contractually agreed supplies and/or services as described in section 3.6.

Procedure for variations in the course of order execution

- 3.10. As a matter of principle, changes may be made only with the express written permission of the company. Changes, additions and/or influencing events/circumstances are to be submitted to the company in time, stating the cause, effects and measures to be taken, so that the company can make a decision. This means that changes/additions that could be of relevance to costs, contract, schedule, quality and/or process must be announced to the company by means of a written change notice/offer. A resulting contract amendment/supplement always requires the express written approval of the company's Purchasing Department. Changes to the technical executions, carried out by the contractor within the scope of the fulfillment his contractual obligations, may not cause additional costs for the company or an impairment of the function and efficiency of supplies and/or services and may only be carried out with the agreement of the company.

Subcontractors

- 3.11. The contractor is obliged to inform the company promptly about planned subcontracting of supplies and/or services and the company must approve this in writing. Exceptions are norm and standard parts and equipment that have been recorded in a separate suppliers list approved by the company.

Correspondence

- 3.12. The complete order number and job number as well as reference to any previous correspondence must always to be given in the correspondence between the contractor and company. With regard to all correspondence from the contractor to the company, the burden of proof for authenticity, accuracy and access of same is borne by the contractor.

4. PRICE

General

- 4.1. The contractor is obliged to offer his supplies and/or services at competitive and fair market prices. The same also applies to all spare parts and consumables.

Pricing terms

- 4.2. Unless agreed otherwise in the negotiation protocol or the order, the following pricing terms apply: The prices are fixed net prices, excluding Valued Added Tax, DAT place of supply, unloaded at the defined place of delivery in accordance with the latest valid INCOTERMS.

Components of the price

- 4.3. The agreed prices include all supplies and/or services, documentation and financing costs to be provided in the sense of these conditions and the listed order attachments and in accordance with the agreed conditions. This includes in particular all costs for the color and design specified by the company, inspections, technical testing, corrosion protection, transport, insurance, packing, taxes (excluding VAT), duties and taxes connected with the contractor's supplies and/or services in the states where they are provided. The company shall bear only those costs listed in the order as being exclusively an obligation of the company.
- 4.4. For extension of orders, changes of orders and additional orders, the same conditions and discounts apply as to the main order.

5. RENDERING OF INVOICE AND PAYMENT

Rendering of invoice

- 5.1. Invoices must be sent to rw@kappa-fs.com by e-mail only, stating the number of the order and the commission number of the company, as PDF documents.

Payment

- 5.2. Unless otherwise expressly agreed, the payment of the agreed amount takes place within 15 working days less 3% discount or within 45 working days net after receipt of the written invoice (= date of the received stamp on the correct invoice that fulfills the required tax and other formal requirements) and after fulfillment of all conditions for this mentioned in the order, especially the supply of the proper documentation. The payment is deemed to have been made upon being debited from the company.
- 5.3. The payment does not imply recognition of the correctness of supplies and/or services including documentation. Consequently, the company does not waive its rightful claims for whatever legal reason.
- 5.4. In the case of a default on payment by the company, interest on arrears at a rate of 5% per annum is agreed.

Off-set

- 5.5. The company is entitled to offset his outstanding payments with counter claims arising from this and any other business with the contractor. Claims concerning the supplies and/or services entitle the company to hold back due payments.

Cessions

- 5.6. Cessions of claims on the part of the contractor are only permitted with explicit consent of the company.

Financial retention

- 5.7. Unless agreed otherwise, the company shall be entitled to withhold 10% of the total order value for the purpose of covering compensation of damages, guarantee or warranty claims as security without interest until the end of the warranty plus 45 days. This financial retention can be replaced by an acceptable, free, abstract and irrevocable bank guarantee by a first-class European banking institution with duration until the end of the warranty plus 45 days.

6. FULLFILLMENT

Date of delivery

- 6.1. For supplies and/or services, the fulfillment date is deemed to be the date of full compliance with the respective obligations of the contractor according to the order specifications, the ordering principles (in particular the negotiation protocol), the GCP as well as the presentation of the complete and correct documentation.
- 6.2. The date of delivery of the documentation is deemed to be the respective date of receipt of the documentation by the company (receipt stamp, confirmation of reception). The delivery of the documentation shall be deemed to have been fulfilled if, in the sense of the respective order agreements/order specifications and this GCP, it is presented completely, correctly and in accordance with the specification.
- 6.3. All agreed dates (including interim dates) and deadlines are fixed. Fixed means that the company shall be entitled, in the event of an exceeded deadline, imminent danger or if significant damage might occur, to withdraw partly or wholly from the contract, even without setting a grace period, and/or to render a replacement at the expense and risk of the contractor without any limitation of liability.
- 6.4. If the contractor recognizes for himself or if the company has reasonable reasons to believe that the contractor can very probably not comply with the agreed deadlines and dates (especially interim planning and production dates), the contractor is obliged to notify the company immediately in writing, stating the reasons and the expected duration of the delay. Moreover, he must also present appropriate/necessary measures to prevent or reduce the threat of delays in writing.

In the aforementioned cases, the company shall be entitled to carry out appropriate checks (such as verification of planning, production with regard to execution, quality and schedule, measurement protocols, etc.) at the expense of the contractor. If it should be necessary based on the results of the accompanying check, the company shall be entitled to specify further necessary measures in agreement with the contractor in order to ensure the proper performance of other contractual obligations.

If, due to any reasons for which the contractor is at fault, such an agreement cannot be reached within a reasonable time, the company shall be entitled without setting any further period of grace to withdraw partly or wholly from the contract and/or to render a replacement as well as to invoice the contractor directly for costs and damages incurred without any restriction of liability.

- 6.5. In the event that the respective order leads to scheduling constraints for the company, the contractor is obliged to urge these verifiably and in time. If he fails to do so, the contractor cannot claim this for any delay of his supplies and/or services.
- 6.6. If it is not possible for the contractor to meet the deadlines – despite a reminder – due to the delayed provision of information/documents from the company, the agreed deadlines shall be postponed for a maximum of the delay caused by the company. The new penalty deadlines for delay are automatically the old deadlines extended by this delay.

Storage

- 6.7. In case that the delivery dates agreed in the order are changed for any reasons not related to the contractor, the contractor agrees to store the supplies properly for up to 6 months on behalf of the company at the expense and risk of the contractor. Payments affected by this can be made in a specific case in accordance with individual agreements against a material assignment statement and/or bank guarantees. Any other claims on the part of the contractor, regardless of the legal basis, are excluded.

Partial deliveries and earlier deliveries

- 6.8. Total or partial deliveries and/or earlier deliveries of supplies and/or services are only allowed with the written permission (shipping release) of the company. Premature supply of supplies and/or services does not give rise to any earlier demands for payment. In case of early supply of supplies and/or services without the consent of the company, the latter reserves the right to invoice the contractor for any associated costs.

Transfer of ownership

- 6.9. Unless agreed otherwise, the transfer of ownership is analogous to the transfer of risk in accordance with the INCOTERMS in their latest version. If the installation, assembly or commissioning is included in the contractor's scope of supply and/or services, the transfer of ownership takes place with the delivery of supplies and/or provision of services and the transfer of risk at the earliest upon full acceptance.

Acceptance

- 6.10. The acceptance takes place after fulfillment of the following conditions:
- performance of all supplies and/or services by the contractor according to order,
 - proper and complete supply of the entire documentation,
 - existence of an acceptance protocol signed by both parties, if it is signed provisionally (a named deficiency or a list of deficiencies shall be deemed to be a proviso), but not before rectification of all deficiencies listed in the acceptance protocol.
- 6.11. If the company accepts the supplies and/or services, even though the contractually agreed performance indicators etc. were not provided in the performance record, then an acceptance protocol of the last performance record is to be drawn up detailing the improvements that still have to be made. Agreements regarding price reductions or penalties arising from this situation are only binding for the company if they have been decided by the company's Purchasing Department. All costs for improvements shall be borne by the contractor.
- 6.12. The company shall not be held liable for any damages suffered by the contractor or a third party in the context of the overall processing of the order. In particular, the company has no due diligence or warning obligations regarding the contractor's calculations, insofar as the contractor acted in its capacity as a professional.

7. PACKAGING, SHIPMENT AND SHIPPING DOCUMENTS

- 7.1. The latest valid INCOTERMS and the company's project-related packaging guidelines, if any exist, shall apply.

Packaging

- 7.2. The product must be packaged properly in the manner usual in the trade suitable for transport. The packaging must be suitable for the nature of the goods and the transport stress considering the respective mode of transport, and also taking into account several transshipments. The provision of packaging material, packaging and transport aids shall be at the expense of the contractor. Particularly attention is to be paid to neutral delivery according to the branding of the company as specified in the Design Manual (see also Section 3.8).
- 7.3. Additional costs for special transport (e.g. air freight), including the prescribed packaging that might be required as a consequence of any default of the contractor (such as deliveries to rectify deficiencies, deliveries due to missed deadlines), must be borne by the contractor.
- 7.4. Return shipments shall be at the risk and expense of the contractor.

Part designation and shipping documentation

- 7.5. The shipment documents have to include at least the following:
- complete and correct order, job and contract item number
 - detailed designation of the goods
 - custom tariff number
 - number of goods/packages
 - tracking number of goods/packages
 - gross and net weight, dimensions
 - goods values must not be indicated
- 7.6. The part designation must be identical in all documents. Above all, this designation must be the same in the drawings, parts lists, packing lists and shipping documents.
- 7.7. Parts lists, packing lists and shipping documents must also be delivered to the contractor promptly before delivery in a suitable electronic form. In case the company organizes the transport, these documents must be submitted at the latest 7 working days before the delivery date.

Certificate of origin

- 7.8. In case the goods are delivered cross-border, the contractor is obliged to include with the shipping documents, free of charge, the necessary valid certificate of origin (movement certificate, preferential certificate of origin, etc.), that is required in the place of delivery for import custom clearance.
- 7.9. All information, fees and additional costs caused by non-incorporation of such documents or through false statements shall be borne by the contractor.
- 7.10. Unless agreed otherwise, the company considers the country of the contractor to be the country of origin. If upon the conclusion of contract the company was not expressly informed by the contractor that the country of the contractor is not the country of origin, any resulting costs shall be borne by the contractor (e.g. customs duties).

International dangerous goods regulations

- 7.11. In the case that goods from the respective order are delivered to which the relevant international dangerous goods regulations apply, the contractor takes responsibility for full compliance with these regulations and the legal consequences arising from any failure to comply.

Temporary deliveries

- 7.12. Installation equipment, tools, measuring instruments etc., and all supplies that are used only temporarily and which will be returned after completion of the order must be packed separately to the main shipment without exception. The delivery of a mix of permanently and temporarily delivered goods is not permitted. Temporarily delivered goods must be marked as such in the shipping documents (above all packing lists).

8. GUARANTEE

Scope of guarantee

- 8.1. The contractor guarantees that the supplies and/or services are executed according to the order, have the characteristics assured as well as those usually required in use and are suitable for the intended purpose, especially with regard to the conditions expected on-site and as a result of their incorporation into a complex total system. He also guarantees that the design, suitability for the purpose, production technology and especially the guaranteed properties are state of the art and comply with applicable regulations, that new materials of superior and suitable quality are used and that the items ordered are free from defects in accordance with the conditions of section 8.12. (guarantee duration).

- 8.2. In addition, the contractor guarantees that his supplies and/or services fulfill the applicable standards and regulations, any relevant requirements under European law and, unless agreed otherwise, as based on the metric system. In the absence of corresponding explicit Austrian norms, regulations and standards, suitable, comparable norms, regulations and standards under German law shall be applied.
- 8.3. Should the place of intended use/execution of the order (usually the location where the entire plant will be situated) be outside of Austria, then in addition to the obligations contained in the preceding paragraph and unless agreed otherwise, the standards and regulations applicable to the place of intended use/execution of the order must be complied with by the contractor in the execution of the order. In addition, the obligations contained in the foregoing paragraph shall apply analogously.
- 8.4. The contractor guarantees the attainment of and reliable compliance with all specifications, performance data and operating parameters according to the contractual agreements. The contractor guarantees to provide any necessary additional supplies and/or services within a reasonable time and without any additional costs for the company at his expense, as well as carrying out all repairs, adjustments, additions and installation work, etc., or to take precautions to ensure that all specifications, performance data and operating parameters are attained and complied with in accordance with the contractual agreements.
- 8.5. Normal wear and tear and damage caused by improper use by the company are expressly excluded from the guarantee.
- 8.6. The contractor fully guarantees the accuracy and completeness of his engineering, consulting and document services, as well as for the accuracy and completeness of oral and written instructions and associated actions in the case of dispatching staff. Accordingly, the contractor shall accept full liability for all the consequences of engineering, documentation and consulting errors as well as errors connected with the dispatch of staff.

Availability of spare and wearing parts

- 8.7. Unless agreed otherwise, the contractor guarantees the availability of spare and wearing parts and consumables for the delivery object at competitive prices for a period of 10 years following the expiry of the warranty period. After this period, he must offer equivalent technical solutions at comparable and competitive prices.
- 8.8. The contractor undertakes to keep any spare and wearing parts on stock in order to provide them to the company within 2 working days. If this is not possible, the contractor is obliged to state the actual delivery period for these parts in the spare and wearing parts list in the documentation. If this is not done, the company is entitled to assume an availability of 2 working days.

Burden of proof, notice of defects, enforcement of claims

- 8.9. The contractor bears the burden of proof for the absence of a defect occurring during the guarantee period as defined by point 8. The provisions of §377 Austrian Company Code (UGB) do not apply. The company has no obligation regarding the checking of the supplies and/or services provided by contractor prior to acceptance. With regard to the judicial enforcement of warranty claims arising, the statutory limitation period applies.

Warranty remedies

- 8.10. The contractor must rectify any defects free of charge and at short notice, regardless of whether the defects were identified earlier or not, by means of repair, replacement or subsequent supply, whichever the company chooses and taking into consideration the project-specific situation and deadline requirements. Notwithstanding that, the options/remedies of price reduction and change remain at the discretion of the company. The contract is deemed to have been fulfilled only after full remedy of defects, any intended acceptance and the expiry of the warranty period.

- 8.11. For smaller defects/deficiencies (order of magnitude up to EUR 10,000 per individual case) or if rectification does not tolerate any delay, the company shall be entitled, without informing the contractor beforehand, to immediately rectify these or have them rectified (substitution/self-remedy) at the expense of the contractor, wherein any warranty claims remain unaffected. This also applies if the contractor, when so requested (by the setting of a short but reasonable deadline, especially in time-critical phases), does not rectify the defects in time. Regarding the execution by substitution/self-remedy, provisions 10.4 and 10.5 shall apply mutatis mutandis. The company shall inform the contractor in advance of the rectification of defects/deficiencies.

Origins of warranty claims

- 8.12. The warranty period ends, unless agreed otherwise, 36 months after acceptance of the entire system (positive performance test) at the company's customer, but no later than 42 months after completion of all shipments, provided that the contractor was not responsible for late acceptance.
- 8.13. The warranty period (36 months) for spare and wearing as well as consumables begins with the installation and the commissioning of these parts and ends no later than 42 months after the contractual delivery.
- 8.14. Any complete or partial interruption of satisfactory industrial continuous operation at the company's customer during the warranty period caused by the contractor shall lead to an extension of the warranty period by the duration of the interruption.
- 8.15. In the case of an improvement, an exchange and/or a subsequent supply, the warranty period for the respective scope of supply/services and the associated function is 36 months after the successful resumption of operation.
- 8.16. In the case of the presence of a hidden defect, the warranty period begins with an objective recognition of the defect at the company's customer. In the case of goods remaining packed until use, defects that become visible only upon removal of the packaging are defined as hidden defects.

Miscellaneous

- 8.17. The company's other rights remain unaffected by this independent warranty obligation on the part of the Contractor.
- 8.18. The contractor guarantees that in the case of a subsequent change of a function or a part of the scope of supply/services by the company during the warranty period, which took place in agreement between the contractor and the company, the guarantee on this function or part of the scope of supply/services and related, interlinked components shall start again from the beginning.

Warranty claims for serial transactions

- 8.19. It is a case of serial damage if, on account of a certain damage pattern and the cause of a defect/damage, it is determined that this damage can occur on all parts supplied by the contractor or on a certain number of the parts supplied by the contractor. Regardless of that, it is a case of serial damage if the same damage is determined on at least 3% or at least 10 pieces of all units delivered, wherein all similar damages determined within a period of 6 months from the occurrence of the first damage shall be used in order to calculate the loss ratio.
- 8.20. The contractor is obliged to repair or replace all units delivered which could exhibit the serial damage. All associated costs (especially labor costs, freight costs, consequential damages due to faulty parts) shall be borne by the contractor. Furthermore, the warranty provisions stated in 8.1 to 8.16 apply.

9. LIABILITY

Contractual penalties for interference with the fulfillment of obligations

- 9.1. In case the contractor exceeds or does not meet the deadlines, dates or properties agreed in the order and the order principles, and if no other regulations are contained in the negotiation protocol, he must pay penalties calculated in each case on the basis of the total order value. These are deducted from current open invoices or receivables.

Scheduling delays for supplies and/or services

If any agreed date is exceeded (applies also to specified individual dates), the company shall be entitled, without proof of loss, to deduct a penalty for delay from the invoice that is not subject to reduction by judgment.

Unless agreed otherwise, the penalty for the delay of supplies and/or services is calculated as 1% per working day beginning on the first day of exceeding the deadline up to a maximum of 10% of the total order value.

Scheduling delays for documentation

Here, a penalty of 0.5% per commenced week applies, calculated from the first week of exceeding the deadline up to a maximum of 5% of the total order value.

Non-attainment of the assured features/warranties/service/performance, etc.

Separate detailed specifications are defined in section 8 'Guarantee' or in the respective negotiation protocol, order, technical specifications or attachments etc.

- 9.2. After the expiry of the time period stated under contractual penalties as well as in case of withdrawal from the contract by the company, the contractor is fully liable for damages. The payment of contractual penalties does not absolve the contractor from fulfilling his obligations and also does not absolve the contractor from any non-compliance with contractual obligations and/or liabilities arising from guarantees.
- 9.3. The obligation to pay a contractual penalty arises for the contractor upon the occurrence of default, without proof of loss by the company. Reservations on the part of the company on the receipt of the delivery are not required in order to preserve the penalty claim. Unless agreed otherwise in writing, the general statute of limitations applies.

Product liability

- 9.4. If claims are made against the company for breach of official safety regulations or on account of domestic or foreign product liability regulations or laws, and if this claim can be attributed to defective products supplied by the contractor, the contractor must reimburse the company for all resulting damages and shall otherwise indemnify the company without limitation of liability.

Vicarious liability

- 9.5. The contractor shall be fully liable for his subcontractors as vicarious agents, in particular with regard to the following criteria:
- Quality and environment
 - Technical standardization
 - Subcontractors' specifications
 - Customs entry, customs transit, import, export and transport, etc.

Other liabilities and damage claims

- 9.6. The contractor is also liable for damages and assumes the costs incurred by the company on account of any non-compliance with contractual obligations and/or guarantees. This damage can, for example, refer to:
- costs incurred by the company in the determination of defects and supervision of the rectification of the defects
 - costs of rectification of defects (substitution/self-remedy)

- costs incurred by the company due to the delayed completion of other parts of an overall plant or of the overall project
- consequential costs incurred by the company due to incorrect supply and/or performance by the contractor
- costs attributable to deficiencies in the shipping and origin documentation, packaging, improper shipping scheduling, loading and unloading, corrosion protection, wrong or missing part designations (spare parts must be designated and packaged separately)
- costs incurred due to negligence with regard to compliance with laws and regulations, labor laws, the obtaining of permits, official documents, etc.
- Unless agreed otherwise, the personnel costs for employees of the company shall be charged according to the Austrian guidelines on fees for technical offices. All other costs shall be reimbursed according to the company's statements of cost.

- 9.7. The contractor is liable for damages incurred by the company due to non-compliance with the agreements mentioned in section 15.
- 9.8. To cover compensation claims, the company may make use of the financial retention without being obligated to do so.
- 9.9. Regarding the statute of limitation, the official statutory limitation periods apply; however, damage claims on the part of the company lose their validity at the earliest three years following awareness of the damage. The limitation period begins at the earliest with the formal acceptance of the scope of supply and/or services in accordance with the section 'Fulfillment'.

10. WITHDRAWAL

Breach of contract

- 10.1. In the case that the contractor does not fulfill his contractual obligations in whole or in part (such as delays in interim dates of the planning and production flow and in the case of dependent auxiliary performances), then the company – as long as no specific regulation is applicable and notwithstanding the provisions mentioned in 9.1 'Contractual penalties for interference with the fulfillment of obligations' – shall be entitled to withdraw in whole or in part from the contract after unsuccessfully setting a reasonable grace period (usually 14 calendar days) and independent of any divisibility of the performance.
- 10.2. With regard to any grace periods, the actual granting by the company of such (e.g. by repeated reminders to comply with the contract) is sufficient.
- 10.3. Especially in the case of non-fulfillment of guaranteed properties or functions, the company shall also be entitled to withdraw entirely from the contract, independent of the divisibility of the performance.

Execution by substitutions / self-remedy

- 10.4. In cases of total or partial withdrawal from the contract, the company shall be entitled, among other things, to render the omitted or insufficient supplies and/or services itself or to have them rendered by third parties at the expense and risk of the contractor without any limitation of liability. The resulting additional costs shall be invoiced directly to the contractor, and their payment period is agreed as 30 working days from the invoice date.
- 10.5. In case the right of substitution/self-remedy requires access to equipment or materials, etc. on the contractor's or its subcontractor's premises, the contractor is obliged to hand them over to the company free of charge. If the right to substitution/self-remedy requires access to documents (such as production drawings, calculations) or other information, the contractor is obliged to hand over the necessary rights, documentation, information, etc. to the company free of charge.

Reimbursement

- 10.6. In case of withdrawal from the contract, the contractor must reimburse the company with the amount already paid for the supplies and/or services which have not yet been performed according to the contract, plus the financial costs incurred by the company.

Creditworthiness of the contractor

- 10.7. In the case that compensation/bankruptcy proceedings or proceedings with similar effects have been initiated against the contractor or his subcontractors, or in the case of a change in ownership at the contractor, the contractor must immediately inform the company and the company shall be entitled, notwithstanding the procedural consequences, to withdraw in whole or in part from the contract with immediate effect as well as to take appropriate special measures.
- 10.8. In compliance with the legal provisions in the case of compensation/bankruptcy proceedings or proceedings with a similar effect, the company shall have the immediate and unrestricted right to dispose of supplies and/or services stored at the premises of the contractor or his subcontractors. The contractor shall provide for the practicability of this provision accordingly.
- 10.9. The contractor must inform the company immediately of the opening, the main course of events and the repeal or cancellation of reorganization proceedings under the Corporate Reorganization Act. The company must receive a monthly report on the state of the reorganization during the reorganization period.

Cancellation

- 10.10. The company has the right, even without fault of the contractor, to withdraw wholly or partially from the contract at any time.
- 10.11. In such a case, the company is obliged to pay the contract price to the contractor proportionally in accordance with the supplies and/or services already delivered and also must also reimburse the proven direct costs incurred for supplies and/or services which are currently in production as well as the fees incurred for the cancellation of sub-contracts. The ownership of the relevant supplies and/or services is transferred to the company upon payment of the aforementioned costs. The burden of proving the actual existence of the above-mentioned costs shall be borne by the contractor. After declaration of withdrawal, the contractor must make every reasonable effort to keep the direct costs to be reimbursed by the company to a minimum. Any further claims, on whatever legal grounds, are expressly excluded.

Suspension

- 10.12. The company has the right to demand that the contractor suspend further execution of the order at any time without providing any reason.
- 10.13. In such a case, the contractor must immediately point out to the company the corresponding consequences and resulting actual direct costs. Moreover, he has to offer the company the economically best possible change of time schedule in the context of the project. The additional direct costs resulting from the suspension must be proven by the contractor and shall be borne by the company. Any further claims, on whatever legal grounds, are expressly excluded.

11. INSURANCE

- 11.1. Unless agreed otherwise, it is the contractor's task to take out such insurance as is deemed necessary. In particular, the contractor must take out and maintain liability insurance policy with a minimum sum insured of EUR 4 million per individual claim, which covers all material damages and personal injuries as well as purely financial damages in conjunction with the execution of his supplies and/or services.

The insurance policies must contain a waiver of subrogation in favor of the company. With regard to insurance limits, the amount of insurance and the excess to be paid by the contractor, the company must be informed and the contractor must present the insurance policy / confirmation to the company on request.

- 11.2. If the contractor is jointly insured under insurance taken out by the company, the contractor accepts the respective insurance conditions as binding. The contractor is obliged, therefore, to perform all related duties, such as the issuing of required information, compliance with directives, compliance with requirements etc.

12. DOCUMENTATION

- 12.1. Documents in the sense of the order are in particular all written, graphic and electronic documents (including source code) suitable for ensuring all activities connected with the proper installation and operation of a plant/plant component or product.
- 12.2. The documentation must be presented by the date mentioned in the order and in the scope described in the order and its attachments and, for the proper fulfillment of the aforementioned activities, must be in German and additionally in the languages specified in the order and/or negotiation protocol, in a computer-editable electronic form and in printed form (one copy).

The documentation is an integral part of the scope of performance and consists among others things of:

- all data that is relevant to the planning and incorporation of the supplies into the entire plant or into a product, such as technical data, drawings, plans (including general layout drawings, illustrations, etc.)
 - operating manuals; source codes; installation, commissioning, operating and maintenance manuals; safety manuals
 - training plans, training documents
 - electrical documentation, electrical circuit diagrams and terminal diagrams
 - list of wearing and spare parts: These are transferred with the original manufacturer's data (address, type and part designation, standards, material specifications, dimensions, general layout drawings, detail drawings) for continuous operation and delivery times in a computer-editable format, so that it is possible in any case for the company to directly procure the relevant parts and equipment from their original manufacturer
 - quotation for spare and wearing parts: the market prices and delivery times must be given for the individual parts
 - material certificates and all relevant inspection certificates and safety data sheets
 - EC declaration of conformity or, if not applicable, manufacturer's declaration/declaration of incorporation
 - performance logging with suitable calibrated measuring instruments
 - document of origin
 - transport certification
- 12.3. The documentation must be provided by the contractor free of charge in a neutral design or, at the request of the company, under the brand name and branding of the company in accordance with the Design Manual. It must enable the company to rapidly identify the various assemblies and individual parts of the supplies/system components delivered (by specification, for example, of order number, job number, identification number, uniform description of the item with goods designation, materials used, standards, etc.) as well as the execution of dispatch, customs clearance, installation, maintenance and repair work and the procurement of spare and wearing parts and consumables even without specialists from the contractor.
- 12.4. The company's title block must be used on all headers of the plans and drawings in accordance with the company's template.
- 12.5. If changes occur in the course of the ordering process, they must be entered immediately and free of charge by the contractor in all technical documents and documentation, so that totally correct final documentation is guaranteed.

- 12.6. Unless agreed otherwise, the finalized and correct installation documentation must be ready by the beginning of the installation planning in such a form that effective and economic installation is ensured.
- 12.7. Insofar as is necessary in conjunction with the order, or if prescribed by EC directives / standards, the checking documentation to be provided by the contractor consists of reports on quality assurance for engineering, manufacturing, final acceptance and other inspections, test reports, etc., as well as schedules and progress reports.
- 12.8. All documentation handed over by the contractor to the company may be freely used by the company for any purposes free of charge.

CE Marking

- 12.9. If CE marking is necessary for the supplies and/or services, it must demonstrably and verifiably comply with all relevant legislation (EU directives, based on Article 95 of the EC Treaty, and Austrian law as well as the law applicable to the place of utilization). Should that not be the case, the company reserves the right to establish a legally compliant condition at the expense of the contractor.

It is the contractor's duty to draw up risk analyses/assessments, operating manuals, technical documentation to demonstrate compliance with the statutory provisions and the necessary declarations of conformity in German language and in the language of the country/place of intended use, unless specified otherwise in the order. The measures defined in the risk analyses/assessments must be implemented consistently. In particular, the contractor must deliver all documents to the company which the latter requires for the risk analysis/assessment of the overall plant or product.

The contractor is obliged to affix the CE marking in accordance with the Kappa Design Manual.

- 12.10. For the supply of incomplete machines, a manufacturer's declaration/declaration of incorporation and the process in accordance with MSV 2010 from 29/12/2009 is to be applied. In addition, the quality requirements of the relevant EC directives must also be complied with. Furthermore, the contractor must announce the additional safety equipment and measures required to enable the company to complete the CE marking of machine and/or the complete plant.
- 12.11. The company reserves the right to have supplies and/or services examined by experts with regard to compliance with the statutory requirements. The company and contractor shall jointly order and arrange an appointment with an expert after completion of the entire supplies and/or services (including declaration of conformity). The contractor bears full responsibility for all costs/damages incurred by the company as a result of missing, faulty or improper CE markings.

13. ACCEPTANCE TEST

- 13.1. The company reserves the right for itself or its auditing bodies/officers to inspect drawings, materials, equipment, packaging, etc., which the contractor has to provide in accordance with the order, in the offices/factories/warehouses of the contractor and his subcontractors with prior notice during the processing of the order for the purpose of carrying out checks in the following scope: inspection, sampling for quality control, scheduling and progress monitoring, etc. Otherwise, point 6.4 applies.
- 13.2. The contractor is obliged, before delivery, to technically test the corresponding supplies if necessary and to submit the test results (test reports, measurement logs etc.) to the company on request.
- 13.3. The company shall be entitled to participate in the contractor's technical tests and to demand special technical tests, if justified. The company must announce this in good time to the contractor, who in turn must invite the company in good time to participate in these technical tests.

- 13.4. In order to perform the tests, the contractor provides at his own expense auxiliary services, materials, workers, interpreters, energy, appropriate testing facilities and testing equipment.
- 13.5. The contractor and the company shall each bear the costs of their own staff. If a positive test is not concluded owing to reasons for which the contractor can be held responsible, the costs of a further test shall be borne by the contractor.
- 13.6. In case of waiving the test or the failure of the audit team to appear on the day of the test, the test documentation has to be handed over immediately or by arrangement to the company, but at the latest before the supply of the plant/plant components to the company.
- 13.7. The performance or waiving of a test does not absolve the contractor from his obligations.

14. ASSIGNABILITY

The transfer, surrender or passing on of any obligations and/or rights arising from the order to third parties by the contractor, with the exception of the subcontracting of supplies and/or services, is possible only with the written consent of the company and subject to the provisions of section 5.6.

15. THIRD-PARTY RIGHTS, CONFIDENTIALITY, ADVERTISING, CUSTOMER PROTECTION

Copyright, patents, licenses and other third-party rights

- 15.1. The contractor guarantees that the creation, manufacture and provision of supplies and/or services as well as the operation or the use thereof, and all associated technical procedures/know-how etc. neither infringe the rights of third parties (such as trademarks, designs, patents, domain protection etc.) nor violate existing boycott clauses, blacklists, embargos etc.
- 15.2. In the case of infringements in this respect, the contractor undertakes to indemnify the company against third-party claims without limitation and guarantees the company unrestricted use of the ordered item.

Confidentiality, advertising

- 15.3. The contents/items ordered in the respective order or in the business case and any information received from the company, such as comments made by employees of the company, may not be disclosed, published, passed on to third parties, duplicated or used for advertising purposes by the contractor without the written consent of the company. In particular, the contractor agrees to use all information received from the company exclusively for the processing of the order and business case, and shall neither use it himself nor jointly with third parties for purposes outside the underlying order or the underlying business case. The use of the company's logo also requires the written consent of the company.
- 15.4. The contractor undertakes to not to disclose knowledge, results and findings obtained through cooperation with the company, and any information of a technical or business nature obtained in the context of the cooperation, to third parties, nor shall he use it for himself. Such confidential information includes:
- all information which is designated as confidential or is recognizable as a trade or business secret
 - all technical information, particularly product and development descriptions, sketches, prints and drawings and other technical documents, manuals, technical processes, methods of functioning and other know-how, especially technical knowledge
 - all information about existing or future legal rights, especially intellectual property, rights to use and licensing rights, rights on texts, technical designs, photographs, films, videos, software, sound recordings and all other rights
 - all information about corporate strategies, intentions, volume and market data, customer information, goals and ideas, as well as planned projects

- 15.5. All documentation placed at the contractor's disposal shall be returned at the company's request.
- 15.6. The contractor shall commit its personnel and subcontractors who gain knowledge of information and documents to a corresponding confidentiality obligation.

Customer protection

- 15.7. The contractor guarantees total customer protection for any follow-up project with the customers of the company or his agent in connection with the total plant supplied by the company for a period of 10 years starting from acceptance. As a consequence the contractor undertakes to offer supplies and/or services arising from the respective contractual relationship with the company, be it for follow-up orders, new orders or the delivery of spare and wearing parts, exclusively to the company and to arrange these through the latter.

In the event that the end customer of the company directly enquires to the contractor for supplies and/or services, the contractor shall inform the company immediately. The company's managing director must give his written consent to such a direct business relationship between the contractor and the company's customer. Failure to comply renders the contractor fully liable and must pay compensation for damages.

Liabilities and contractual penalties

- 15.8. The contractor is liable for compliance with the aforementioned provisions. The amount of the damage claim can be asserted without provision of proof of damage and is not subject to reduction by judgment. The contractor is required in this respect to disclose all documents.

In addition to the liabilities in accordance with section 15.8, a contractual penalty in the amount of EUR 10,000 is agreed for each case of breach of the provisions of sections 15.3 to 15.7. This contractual penalty shall be due immediately if a breach of contractual provisions is determined by the company. Expressly stated, the penalty must be paid for each case of violation. If the violation is a continuous violation, the contractor shall be obliged to pay a further EUR 10,000 for every commenced month in which the violation persists. The assertion of a continuous offence is excluded. The enforcement of further damages remains unaffected.

16. FORCE MAJEURE

- 16.1. The contracting parties are completely or partially exempted from the timely fulfillment of the contract if they are hampered by force majeure.
- 16.2. Events of force majeure are exclusively war, riots, natural disasters, fire and union-approved strikes.
- 16.3. If the contractor is hampered by an event of force majeure, he can claim the existence of force majeure only if he has informed the company immediately, but no later than 5 calendar days after the occurrence of the event, about the start and foreseeable end of the hindrance by means of a letter sent by registered mail containing a statement of the cause, expected effects and duration of the delay and confirmed by the respectively responsible government authority or Chamber of Commerce and Industry of the country of delivery.
- 16.4. In case of force majeure the contractual partners have to undertake all efforts to eliminate or reduce the difficulties and the anticipated damage and to inform the other party on an ongoing basis.
- 16.5. Appointments or deadlines which cannot be met due to force majeure shall be extended for the duration of the effects of force majeure or for a mutually agreed period. The provisions of section 6 apply once again. All other contractual obligations of the contractor remain unaffected.

- 16.6. If a case of force majeure continues for longer than four weeks and no mutual agreement can be reached on a solution, then each party to the contract shall be entitled to withdraw wholly or partly from the contract.

17. PLACE OF JURISDICTION AND APPLICABLE LAW

- 17.1. The contractor and the company shall attempt to jointly solve all the problems that arise during the order processing/project execution in an amicable way and with mutual agreement. In the case of court proceedings, the following provisions regarding the place of jurisdiction and the choice of law shall apply.
- 17.2. **In the case of orders placed with a contractor located within the territory of the European Union:**
All disputes arising are subject to Austrian substantive law with the exception of its conflict of law rules (IPRG, EVÜ) and the United Nations Convention on Contracts for the International Sale of Goods from 1980 in their current versions. The place of the civil court is Steyr, Austria.
- 17.3. **In the case of orders placed with a contractor not located within the territory of the European Union:**
All disputes arising are subject to Austrian substantive law with the exception of its conflict of law rules (IPRG, EVÜ) and the United Nations Convention on Contracts for the International Sale of Goods from 1980 in their current versions. The company has the option of either choosing Steyr, Austria or the court at the headquarters of the contractor as the place of the civil court.
- 17.4. The contractor is obliged at any time at the request of the company to confirm in writing the existence of the place of jurisdiction agreement.

18. SEVERABILITY CLAUSE

- 18.1. If any provision of these General Conditions of Purchase should be invalid, void, illegal or unenforceable, it shall not affect the validity of the remaining provisions.
- 18.2. In such a case the contractor and the company undertake to replace the invalid, ineffective, illegal or unenforceable provision with one that most closely describes the economic purpose of this provision in a legally permissible way.

19. SAFETY CLAUSE

The supplies and/or services of the contractor shall comply with all the relevant local safety regulations, laws, ordinances, standards, etc. (in particular in Austria they shall comply with the Employee/Interior Protection Act, the Machinery Safety Regulations, the Construction Site Coordination Act (BauKG), the provisions for electrical engineering and the relevant fire and explosion protection regulations in their currently valid versions).

If carrying out installations, the SGE policy of the company must be considered. Additionally the construction site safety regulations must also be adhered to (e.g. site regulations, SIGE plan, customer-specific regulations).

