



# GCP – General Terms and Conditions of Purchase of Swietelsky AG and its affiliated companies

## Preamble

Swietelsky AG, and its affiliates based in Austria, conclude purchase contracts for equipment, materials and other movable items (hereinafter referred to as "goods") on the basis of these General Conditions of Purchase (hereinafter referred to as "GCP"). The GCPs also apply to a contract which involves the delivery of movable items to be manufactured or produced. The GCPs do not apply to the execution of construction or work services, but in this case Swietelsky AG's General Terms and Conditions for work contracts, available at [www.swietelsky.at/transparenz/einkauf](http://www.swietelsky.at/transparenz/einkauf) apply.

Swietelsky AG or one of its affiliated companies is considered the buyer. The seller is the company, from which Swietelsky AG or one of its affiliates acquires the goods. The contractor is the client of Swietelsky AG or one of its affiliates.

All changes to these GCPs or other contractual conditions require a written agreement in order to be effective, as does any waiver of this formal requirement. Any of the seller's own terms and conditions will in no way become part of the contract. The seller has acknowledged these GCPs and confirms their full validity.

It is explicitly understood that future purchase contracts will be concluded exclusively on the basis of these GCPs, even if no express agreement has been made in this regard.

These GCPs have been translated from German into English. In the event of contradictions, the German version will take precedence.

Austrian law applies, excluding the conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.

## I. Offer, Conclusion of Contract

- (1) Offers from the seller are binding. The seller remains bound to their offer for six months from the date the offer is submitted.
- (2) The seller's cost estimates are subject to the explicit guarantee of their accuracy and are free of charge.
- (3) If the goods are manufactured individually according to the buyer's specifications (e.g., instructions, plans), the seller confirms with their offer that the buyer's specifications have been examined in detail, that no flaws have been found and that there are no concerns about the execution.
- (4) The purchase contract is concluded by means of a written order from the buyer. The seller must confirm receipt of this to the buyer in writing. If this confirmation contains deviations from the order in terms of content, these deviations will only apply if the buyer approves them in writing. Silence does not constitute consent.

## II. General Agreements, Orders

- (1) Orders from a general agreement must be made in writing.
- (2) The conditions and prices stipulated in a general agreement are valid for the agreed call off period plus six months.
- (3) The quantities stated in a general agreement are the buyer's expected required quantities for the specified call-off period. The buyer has no obligations to accept the goods. The buyer can place orders under the agreed conditions up to six months after the call-off period specified in the general agreement. Claims from the seller concerning quantity shortfalls are excluded.

### III. Order of the Contract Components

(1) Contract components:

- a) Written order from the buyer;
- b) General agreement;
- c) Minutes of the negotiation plus attachments;
- d) Invitation to submit an offer plus attachments;
- e) GCP in its current version;
- f) Code of Conduct for Business Partners of Swietelsky AG and its Affiliated Companies the current version of which can be found at [www.swietelsky.at/transparenz/einkauf](http://www.swietelsky.at/transparenz/einkauf);
- g) Offer from the seller;
- h) All relevant technical ÖNORMS in the version valid at the time the offer is submitted, in addition the DIN or other regulations which represent the state of the art at the time the offer is submitted, furthermore all the legal regulations regarding the certification of construction products (e.g., CE marking) as well as all the relevant safety stipulations.

(2) In the event of contradictions to the above technical or contractual basis, the strictest provision in favour of the buyer applies.

### IV. Transfer of Services

(1) The seller is not entitled, without the written consent of the buyer, to have the outstanding service provided by a third party. In the case of the transfer of services to a third party, the third party must undertake to fully comply with these general conditions of purchase (GCP).

(2) In the event of infringement, the seller is obliged to pay a contractual penalty of 10% of the gross purchase price.

(3) The seller is fully liable for the service passed on to third parties as well as for his own actions.

### V. Inspection- and Warning Obligation

The seller must comprehensively examine the documents, instructions, materials, etc., provided by the buyer for the production of individual goods and immediately inform the buyer in writing of any flaws or concerns about the intended type of execution. Failure to warn the buyer, makes the seller liable for the consequences of their omission.

### VI. Delivery Dates, Delays, Penalties

(1) The agreed delivery dates are binding and penalized in accordance with the following regulations.

(2) Unless otherwise agreed, the delivery dates announced by the buyer in the invitation to submit an offer or its attachments (e.g., schedule) apply.

(3) The seller is obliged to inform the buyer immediately if delivery is not possible, is not possible on time or is only possible in part. Partial deliveries are only permitted with the written consent of the buyer. The seller bears any costs resulting from early delivery (e.g., storage costs).

(4) In the event of total or partial default, the seller must pay a contractual penalty of 0.5% of the gross purchase price per calendar day, but a maximum of 10% of the gross purchase price.

(5) If the delivery of even part of the goods is delayed, the buyer is entitled to withdraw from the contract immediately without setting a grace period. In this case, the seller is obliged to pay a contractual penalty of 10% of the gross purchase price.

### VII. Delivery, Transport, Transfer of Risk

(1) The goods are delivered free to the agreed delivery destination at the seller's expense and risk, including packaging and unloading. The seller must obtain any official permits required for transport. The seller is liable for any contamination of public traffic areas caused and will indemnify and hold the buyer harmless.

(2) The seller must comply with the shipping regulations of the manufacturer and/or the buyer as well as all statutory transport regulations (e.g., Harzadous Goods Transportation Act).

(3) Upon delivery, the seller must present delivery notes detailing the type and quantity of goods to the buyer for signature. By signing the delivery notes, the buyer only confirms receipt of the goods, but not their quantity or quality.

(4) If the buyer has provided the seller with a contact person, the seller may only hand over the goods to this person or to a person authorized by them in writing. If the goods are handed over to another person, the risk only passes to the buyer with written confirmation from the named contact person.

(5) If the seller undertakes additional obligations, such as handing over test certificates, operating instructions or training measures, the risk only passes to the buyer when the seller has demonstrably fulfilled all of these obligations.

- (6) If the seller delivers the goods before the contractually agreed delivery date without the buyer's written consent, the risk does not pass to the buyer until the contractually agreed delivery date.

### VIII. Prices

- (1) The agreed prices are fixed prices.
- (2) All the necessary additional services (e.g., transport, insurance, assembly) are included in the prices.
- (3) Agreed reductions and discounts also apply to the mere delivery of partial quantities and for additional orders.

### IX. Invoicing and Payment

- (1) After complete delivery, invoices must be sent to the email or postal address stated in the order confirmation, stating the reference code "RC-KST-AT-respective company number-cost center" (e.g. RC-KST-AT-101-01000010) and with corresponding proof of performance.
- (2) If available, invoices must contain the order number, the order date and the order item number. Invoices must be structured in such a way that the individual invoice items are identical to the items in the order confirmation or in the seller's offer.
- (3) The possibility of issuing partial invoices must be expressly agreed. Any agreed partial invoices must be explicitly designated as such.
- (4) Invoices are due for payment within 60 days minus a 3% discount or within 90 days without a discount.
- (5) Due to the buyer's company holidays at Christmas time, payment deadlines between 20th December until 10th January have been suspended by mutual consent.
- (6) The buyer's payment transfers are made via computer support twice a week (Monday and Thursday). The agreed discount and payment deadlines are also met if the buyer gives the bank instructions on the next transfer date after the payment deadline has expired - if the next transfer date falls on a public holiday. The seller expressly agrees to a resulting extension of the deadline by up to five working days.
- (7) The right to a discount for individual payments made within the discount period remains valid

even if other payments are made outside the discount period.

- (8) The buyer is entitled to offset the seller's claims against their own claims or against claims of their group companies or joint ventures in which the buyer or one of their group companies is involved. This also applies to assignments, pledges and judicial seizures.
- (9) In the event of late payment, for which the buyer is responsible, default interest of 2% above the base interest rate is agreed. The base interest rate which applies on the last calendar day of a calendar half-year is decisive for the next half-year.

### X. Guarantee

- (1) If a down payment has been agreed, the seller must secure it by an abstract, irrevocable and unconditional bank guarantee from a first-class Austrian bank, payable on first demand and denominated in euros.
- (2) If partial invoices have been agreed, the buyer is entitled to withhold 10% of the respective invoice amount as security for all claims arising from the fulfillment of the contract until the final invoice is due.
- (3) In the case of a contract for the production of individual goods, the seller must send the buyer a contract performance guarantee amounting to 10% of the gross purchase price within 10 days of conclusion of the contract. If the seller does not provide this guarantee or does not provide it in a timely manner, the buyer is entitled to immediately withdraw from the contract. In this case, the seller is obliged to pay a contractual penalty of 10% of the gross purchase price.
- (4) In the case of a contract for the production of individual goods, a guarantee amounting to 5% of the gross invoice amount is agreed for the duration of the warranty, which the buyer can retain in cash. If this amounts to more than EUR 1,000 the seller can replace this cash retention with an abstract, irrevocable and unconditional bank guarantee from a first-class Austrian banking institution, payable on first demand and denominated in euros. The bank guarantee must have a term of up to one month after the end of the guarantee period.

## **XI. Acceptance, Warranty**

- (1) The application of Sections §§ 377 and 378 UGB (Austrian Commercial Code) has been mutually excluded upon.
- (2) In the case of a contract for the production of individual goods, a formal takeover is agreed. A written protocol must be drawn up about this, which must be signed by both contractual partners.
- (3) In the occurrence of any defects, the buyer is entitled to retain the entire purchase price.
- (4) Should any defects be reported during the warranty period, it is assumed that they were already present at the time of delivery.
- (5) Warranty claims for defects reported within the warranty period expire within six months after the warranty period has expired.
- (6) The buyer is also entitled to recourse according to § 933b ABGB (Austrian Civil Code) if the end customer is an entrepreneur.
- (7) If the buyer incurs costs in the course of the seller's warranty work (e.g. construction supervision), these must be reimbursed by the seller based on actual expenses incurred.
- (8) In the event that legally binding insolvency proceedings over the assets of the seller are opened, the latter irrevocably and indefinitely offers the buyer to assign all contractual claims against their subcontractors or suppliers, in particular from the title of performance and warranty, to the buyer. The seller will make all necessary declarations so that the buyer can assert claims against them directly. In any case, this provision also applies if the insolvency administrator withdraws from the contract.

## **XII. Compensation**

- (1) The burden of proof for lack of fault in claims for damages arising from defects lies with the seller even after ten years after the acceptance.
- (2) The seller is also fully liable for damages within the scope of the Product Liability Act.
- (3) The seller fully indemnifies and holds the buyer harmless with regard to third-party damages. This also applies if claims are made against the buyer by third parties through no fault of their own, provided that this claim was caused or partly

caused by the seller and also includes costs arising from such legal disputes. The buyer will immediately inform the seller of any claims made by third parties in order to give the seller the opportunity to settle the claim immediately.

## **XIII. Contract Withdrawal, Cancellation**

- (1) The buyer is entitled to withdraw from the contract immediately if the contract with the contractor is terminated for whatever reason or if the seller is rejected as a supplier by the client.
- (2) In the case of a contract for the production of individual goods, the buyer has the right to cancel the goods in whole or in part.
- (3) The buyer is also entitled to cancel part of the goods at any time.
- (4) In these cases, the seller will only receive compensation for the defect-free goods delivered up to the time of termination of the contract; Any further claims (e.g., damages, lost profits, etc.) are excluded.

## **XIV. Ownership- and Proprietary Rights**

- (1) Any retention of title by the seller to the goods delivered is mutually excluded.
- (2) The samples, illustrations, plans, drawings, calculations, execution instructions, product descriptions, materials and other documents handed over by the buyer for the production of goods remain the property of the buyer. They are to be used exclusively to provide the contractual service and may neither be used by the seller for their own purposes nor made accessible to third parties. The seller must return them upon delivery to the buyer. Materials provided must be stored by the seller free of charge, transparently, clearly labelled and separated from the seller's goods and marked as the property of the buyer.
- (3) The seller may only take photos of a construction site with the buyer's written consent; Publications of any kind are prohibited.
- (4) The seller guarantees that no third-party property rights (e.g., copyrights) have been violated. If claims are made against the buyer by third parties due to a violation of property rights for which the seller is responsible, the seller will fully indemnify and hold the buyer harmless.

## **XV. Obligation of Confidentiality**

- (1) The seller undertakes to maintain the strictest secrecy about all the information of whatever nature which becomes known to them in connection with this purchase contract (trade secrets, technical procedures, prices, etc.). The seller must transfer this obligation to any third parties which they employ to fulfill the contract.
- (2) Violations entitle the buyer to immediately withdraw from the contract and claim a contractual penalty of 5% of the gross purchase price.

## **XVI. Insurance**

- (1) The seller is obliged to take out sufficient business liability insurance. The business liability insurance must be maintained at least until the end of the warranty period.
- (2) The seller is also obliged to take out transport insurance appropriate to the subject matter of the contract at their own expense.
- (3) At the request of the buyer, the seller must provide proof that this insurance has been taken out.
- (4) The seller undertakes to immediately report any event of damage to the insurance company and the seller is not entitled to waive insurance coverage in the event of insurable damage.

## **XVII. Compliance-Regulations, Supplier Code**

- (1) The seller declares that they are familiar with the Code of Conduct for Business Partners of Swietelsky AG and its Affiliated Companies, available at the following website [www.swietelsky.at/transparenz/einkauf](http://www.swietelsky.at/transparenz/einkauf). The seller undertakes to subject themselves to this code and to act accordingly during the collaboration with the buyer.
- (2) Information and documents may be required from the seller in order to fulfill the buyer's legal obligations in the context of sustainability (e.g., EU taxonomy, CSRD/ESRS). The seller undertakes to provide the relevant information and necessary documents upon request from the buyer.
- (3) The seller must pass on the above declarations and obligations to their sub-contractors and suppliers.
- (4) In the event of a violation, the buyer is entitled to declare immediate withdrawal from the contract

and the seller must fully indemnify and hold the buyer harmless. In such a case, the buyer has the right to demand a no-fault contractual penalty of 10% of the gross purchase price.

## **XVIII. Data Protection**

- (1) The buyer processes data based on legal and contractual provisions and for the purpose of fulfilling the contract.
- (2) The seller declares that they are familiar with the buyer's data protection declaration, which is available on the group website [www.swietelsky.com/datenschutz](http://www.swietelsky.com/datenschutz), and undertakes to process data in accordance with these data protection regulations.
- (3) The seller must pass on the above-stated obligations to their subcontractors and suppliers.
- (4) The information obligations in accordance with Articles 13 and 14 DSGVO (General Data Protection Regulation) towards the data subject must also be passed on by the seller to its subcontractors and suppliers.
- (5) In the event of a violation, the buyer is entitled to declare immediate withdrawal from the contract and the seller must fully indemnify and hold the buyer harmless.

## **XIX. Disputes**

In the event of disputes, the competent court in Linz is agreed as the exclusive place of jurisdiction.