

**These terms and conditions apply for Netz Burgenland GmbH Kasernenstrasse 9, 7000 Eisenstadt and its affiliated companies**

## **NETZ BURGENLAND GENERAL PURCHASING AND ORDERING TERMS AND CONDITIONS**

### **1. Contractual basis**

Unless expressly stated otherwise in the purchase order, the below Netz Burgenland GmbH General Purchasing and Ordering Terms and Conditions ("PURCHASING TERMS") apply. Any general terms and conditions of the contractor are no part of the contract, even if Netz Burgenland GmbH and/or any of its associated companies being the customer ("customer") fails to expressly reject them, or if any documents prepared by the contractor (e.g. order confirmations; invoices) make any references to such general terms and conditions being applicable.

The contractor undertakes to comply with the Code of Conduct for suppliers, which is also published on the Netz Burgenland GmbH website (<https://www.netzburgenland.at/downloadcenter/allgemeine-bedingungen.html> and [www.netzburgenland.at](http://www.netzburgenland.at)). This Code of Conduct is of the essence when it comes to these PURCHASING TERMS.

Verbal purchase orders are valid only if a purchase order number was also provided. Such verbal purchase orders and any other arrangements require written confirmation.

For any deviations from the customer's purchase order and/or the present PURCHASING TERMS, in particular any deviations concerning the prices, the customer's consent shall be obtained prior to delivery or performance.

In the case, where usage and maintenance works require or usually involve any work drawings, operating instructions and spare parts lists, they form an essential part of the purchase order and are to be provided to the customer by electronic means and as hard copies in duplicate in no case later than at the time of delivery and/or completion.

### **2. Prices**

All listed prices are fixed prices, plus statutory value added tax.

### **3. Despatch and delivery**

All documents relating to the purchase order, such as any letters, delivery notes, shipping notices, invoices, freight documents etc., shall state the identification data of the respective purchase order (purchase order number, plant descriptions etc.). The dispatch notes and the bills of delivery to be prepared in detail shall be sent to both the customer and to the respective recipient in duplicate. A packing list shall be enclosed to all deliveries; without such list, no deliveries will be accepted.

All deliveries will be properly packed and shipped on a duty paid basis and free to destination at the contractor's risk. Any costs and damage arising from non-compliance with the shipping regulations shall be borne by the contractor.

### **4. Sustainability and environmentally-friendly measures**

When submitting a proposal, care should be taken to avoid environmentally harmful products as far as

possible, thus reducing the CO2 footprint.

Product packaging must consist of paper, cardboard, carton or PE or PP film and must not contain any halogenated compounds (PV).

Consideration should also be given to low-waste product packaging made from renewable raw materials and/or recyclable product packaging. Reusable packaging should be used where possible.

At the request of the tendering authority, the bidder is obliged to declare the use of products or packaging materials that contain PVC, other halogenated plastics or halogenated hydrocarbons and to justify why these must be used.

Commercially available recycled materials that meet the tender requirements are to be given preference over primary raw materials. This also applies to alternative tenders. Particularly in the context of construction services, care must be taken to ensure that demolition materials, for example, are recycled.

The respective tendering department may request the submission of evidence, e.g. the CO<sub>2</sub> balance or the implementation of an environmental management system, before awarding the contract.

## **5. Assignment of orders**

Orders may be transferred to sub-contractors and/or third parties only with the express consent of the customer. The customer is entitled to transfer the contractual relationship with all its rights and obligations to an affiliated company in accordance with section 189a UGB (*Austrian Business Code*).

## **6. Sub-contractors**

The contractor shall ensure that its staff and all the sub-contractors it has commissioned comply with all legal provisions, in particular the provisions concerning protection of the life and the health of workers and protection of the environment. The workers may enter only those areas which the customer allowed them to enter. Any instructions given by construction and/or assembly supervisory bodies shall be observed.

## **7. Compliance with statutory labour and social regulations**

The contractor expressly undertakes to comply with all labour and social law provisions applicable in Austria when providing the services, in particular with regard to the remuneration due by law, ordinance or collective bargaining agreement, the provisions of the Act on the Employment of Foreign Nationals (BGBl. no. 218/1975) and the Act against Wage and Social Dumping [*Lohn- und Sozialdumping-Bekämpfungsgesetz*] (LSD-BG, BGBl. No. 44/2016) and predecessor provisions in the Labour Contract Law Adaptation Act [*Arbeitsvertragsrechts-Anpassungsgesetz*] (section 7k, 7i (4) or/and 5 AVRAG).

The contractor undertakes to comply with its statutory control obligations with regard to the foreign nationals employed by it or its sub-contractors as defined by the respective version of the Austrian Act on Employment of Foreigners [*Ausländerbeschäftigungsgesetz*] BGBl. no. 218/1975. The contractor shall produce complete evidence showing that it fulfilled these supervisory obligations before starting any works by submitting to the customer the relevant documents (residence permits, employment permits etc.) without the need for solicitation and it shall indemnify and hold the customer and the latter's company bodies and employees harmless against any damage and/or liability resulting from a violation of these obligations.

The contractor undertakes to implement all necessary measures to prevent wage and social dumping, and in particular to take all necessary organisational and personnel-related precautions, and to also

impose the obligations described above on all its sub-contractors and to withdraw from the contract with a sub-contractor with immediate effect or to terminate such a contract with immediate effect if there is evidence or reasonable suspicion of non-compliance. In the event of non-compliance with these obligations, the customer is entitled to terminate the contract with immediate effect. The contractor is liable for all damage suffered by the customer as a result. Even if no liability has been asserted against the customer in accordance with LSD-BG, the customer is entitled, in the event of doubt as to compliance with the above obligations at the time of payment of the invoice, to withhold the portion of the wage attributable to the wages owed until the expiry of the assertion periods under LSD-BG, or until it has been established that no liability has been asserted against the customer, and can no longer be asserted.

## **8. Insurance**

The contractor is obliged to take out corresponding liability insurance at its own expense which covers any and all essential liability risks arising from the legal provisions and the contract.

## **9. Acceptance and exclusion of the obligation to give notice of defects**

Deliveries or services will be accepted after inspecting them at the place of use, but in no case later than at the time when the goods are used and/or commissioned. If a defect appears at a later time, the provisions of section 377 UGB apply. The customer's obligation to notify the contractor of any defects (sections 377 et seq. UGB) is excluded.

## **10. Delay**

If the contractor is in default with regard to the provision of the contractual services, the contractor is in any case obliged to immediately inform the contractor about this. The customer may either insist on performance of the contract in accordance with its provisions or withdraw from the contract by indicating a reasonable grace period in writing. Withdrawal from the contract does not affect the right to compensation for damages caused by non-fulfilment.

In the event that the contractor is responsible for, and culpable of, not meeting the contractual delivery and/or completion date, the customer is entitled to reduce the contractual price by a contractual penalty of 0.5 % for each week, or a part thereof, in which the deadline is not met, but not more than 5 % of the contractual price. The contractual penalty is payable in full within 14 days from the time of invoicing. Compensation shall be paid to the customer for any damage exceeding the contractual penalty.

## **11. Warranty and guarantee**

The contractor ensures satisfactory delivery and/or performance in accordance with the purchase order and applicable provisions and standards. Applicable statutory provisions apply to warranty, unless the purchase order provides otherwise. The warranty claim also covers all those defects which arise during the contractual warranty period. The contractor is responsible for producing evidence showing that it performed in compliance with the contract and without any defects. In the event of defective delivery and/or performance, the customer has the right to reject such delivery and/or performance and to request deliveries and/or performance in compliance with the contract, rectification of the defects or reasonable price reductions, without prejudice to other legal rights or to the right to withdraw from the purchase order after a reasonable grace period lapsed.

Unless the contract provides otherwise, applicable legal provisions of the Austrian Business Code UGB [Unternehmensgesetzbuch] and the Austrian Civil Code ABGB [*Allgemeines Bürgerliches Gesetzbuch*] apply to the warranty. The warranty period begins upon proper acceptance and covers the entire statutory warranty period.

Defects which occur either during the warranty period or the guarantee period, whether for reasons related to material – regardless of whether this was provided by the contractor or its suppliers –, defective constructions, defective production etc., shall be rectified by the contractor free of charge upon the customer's request. Replacement parts are subject to a new warranty and guarantee period. If the contractor fails to fulfil its obligation immediately, the customer is entitled to remedy the defect itself at the contractor's expense.

## **12. Compensation**

The unrestricted provisions of the Austrian Product Liability Act apply to the processing of this purchase order. The contractor is liable for any damage outside the scope of application of the Austrian Product Liability Act in compliance with the legal provisions.

Unless the parties agreed otherwise, liability for cases of slight and gross negligence is not limited. Without prejudice to limitation of liability provided for under a contract, liability exists in each case at least to the extent of existing insurance cover (maximum liability amounts). The contractor, in each case, bears the burden of proof concerning the degree of culpability, i.e. for the absence of culpability and/or that of gross negligence.

Unless the parties agreed otherwise, liability for cases of slight negligence and for compensation for consequential damage, pure property damage, indirect damage, loss of production, funding costs, costs for substitute energy, loss of energy, loss of data or loss of information, loss of profits, loss of savings, loss of interest and damage from third-party claims against the customer is not excluded.

Section 376 UGB applies in the event of non-compliance. Compensation for non-compliance will be calculated in accordance with section 376(2) UGB or section 376(3) UGB. With regard to non-fulfilment, for which the contractor is responsible, the customer reserves the right to request payment of the difference compared to interest in fulfilment which arose in the context of this legal transaction and payment of compensation for expenses according to section 921 ABGB caused by non-performance.

## **13. Invoicing**

Invoices shall be sent to the customer as a simple copy by also indicating the purchase order number. Electronic invoices must be submitted to the email address [eingangsrechnungen@burgenlandenergie.at](mailto:eingangsrechnungen@burgenlandenergie.at). The invoice must comply with applicable tax regulations, in particular by the Austrian value-added tax (UID) number being indicated and the VAT amount being separately identified. Invoices which do not fulfil these conditions do not lead to the amounts indicated therein becoming due for payment and may be rejected by the customer. The payment deadline is calculated by the customer from the time of receiving a correct invoice and all documents relating to the delivery/service. Payments are made only once a week and include only the invoices which became due for payment in the preceding week. Payments made in compliance with this payment deadline are deemed to be timely with regard to contractual discounts.

If no other agreement was reached in this regard, the customer pays all invoices within 30 days from receiving the respective invoice and correct deliveries and/or from order completion, subject to a deduction of 3 % discount, or within 60 days subject to no deductions whatsoever. If the parties agreed upon down payments or partial payments, the contractor shall request such payments in writing. Payment of invoices does not imply that the customer accepted any deliveries and/or services to be correct. Retentions to secure any warranty claims and retentions of invoices on account will be separately agreed upon and be made also for partial invoices.

## **14. Assignment of claims**

The contractor may assign its claims against the customer only if the customer has consented to this in writing.

**15. Handling of information and documents provided**

The information and documents (e.g. sketches and drawings) provided to the contractor remain the property of the customer; the contractor is not permitted to use these elsewhere, must keep them confidential, must protect them appropriately and not allow third-party access to them unless it can be shown that they are already in the public domain or accessible. They shall be returned to the customer in addition to the samples made available at the time of delivery/performance.

**16. Data protection**

With respect to personal data, the contractor is obliged to comply with the applicable data protection regulations. In the case where the contractor is a data processor in terms of Article 4(8) GDPR, the contractor is obliged to fulfil the obligations under Article 28 and Article 29 GDPR, to implement any and all measures required under Article 32 GDPR and to impose this obligation also on any and all sub-processors they possibly engage.

Additional information concerning the type, scope and purpose of data processing, and on the rights of access, correction, erasure, restriction of processing, withdrawal, objection and data portability is available at [www.burgenlandenergie.at/de/rechtliches/datenschutz](http://www.burgenlandenergie.at/de/rechtliches/datenschutz) or may be requested by post by calling +43 800 888 9000.

**17. Indemnity against claims and actions**

The contractor shall indemnify and hold the customer harmless in the event of arising patent disputes, unless the reason for such dispute is related to the documents provided by the customer within the context of the respective purchase order.

**18. Further rights of the customer**

The customer is entitled to transmit to third parties (e.g. planning firms, plant owners, insurance companies, experts, affiliated companies) any information from this business transaction for the purpose of fulfilling the contract or for the purpose of implementing any pre-contractual measures or for the purpose of protecting its legitimate interests. Pursuant to Article 189a UGB, the customer and its affiliated companies shall be granted the transferable and exclusive rights of use, unlimited in terms of content, time and place, to all works arising from or in connection with this contractual relationship. The granting of rights also includes the processing in any manner and based on any technical processes whatsoever.

**19. Final provisions**

The exclusive place of jurisdiction for both parties is the court having material jurisdiction over the customer's place of business. Austrian law shall apply exclusively, to the exclusion of all conflict of law provisions. The contractual language is German.

Should individual provisions of these terms and conditions be or become totally or partially invalid, validity of the remaining provisions of these terms and conditions remains unaffected by this. In such a case, the customer and the contractor are obliged to replace any such invalid, ineffective, illegal or non-enforceable provision by a provision which comes as close as possible to the economic purpose of the invalid provision in a legally permissible manner.