

General Conditions of Purchase of GASCADE Gastransport GmbH and its affiliated Companies according to the German Stock Companies Act

Status: March 2012



1. General

1.1 These Conditions of Purchase form part of the contract between GASCADE Gastransport GmbH or its respective Affiliate issuing the Purchase Order ("the Company") and the party to whom the Contract has been awarded ("the Contractor") and shall apply if and to the extent that no other terms have been agreed upon and stipulated in such Purchase Order. Any terms of business of the Contractor are only valid if and insofar as the written agreement of the Company is received by the Contractor expressly confirming the Company's acceptance of the Contractor's terms of business. In particular, any references of the Company to correspondence from the Contractor containing or referring to the Contractor's terms of business shall not constitute the Company's acceptance of the applicability to this Contract of such terms of business.

1.2 These Conditions of Purchase shall remain valid and shall prevail over any terms of business of the Contractor even if the Company should accept any goods/services in the knowledge that the Contractor has purported to deliver them on terms of business of the Contractor that deviate from or are in conflict with these Conditions of Purchase.

2. Bids

2.1 Bids and price quotes shall not be remunerated and shall not create any obligations on the part of the Company.

2.2 A Bidder must follow and comply with the Company's Instructions to Tenderers. If a Bidder wishes to submit an alternative proposal which it believes to be technically or economically superior to the bid invited by the Company, it shall additionally present this to the Company as an alternative offer.

3. Delivery Date/ Partial Delivery of Goods/ Partial Performance of Services

3.1 The Contractor must comply with the agreed delivery date. Such compliance requires delivery of the goods free of any defects to the Company within the Company's regular business hours accompanied by the requisite shipping documents to the address specified in the Purchase Order ("Delivery Point"). If the Company and the Contractor have agreed to a delivery inclusive of assembly/service, the delivery of the goods free of any defects shall not be considered to have taken place until the assembly/service has been duly carried out as specified in the Contract. If a formal acceptance procedure is stipulated by law or specified in the Contract, the time specified for such acceptance shall be adhered to by both parties. Advance deliveries of goods/performance of services or partial deliveries/partial performance of services require the Company's prior agreement.

3.2 If and as soon as the Contractor recognizes that it will not be able to fulfil its contractual obligations either in full or in part, or not within the stipulated timeframe, it must notify this to the Company in writing forthwith. The notice must state both the reason(s) for the delay and the predicted delay in delivery time. Any acceptance by the Company of a delayed or partial delivery of goods/performance of services shall by no means constitute a waiver of any rights of the Company related to late or partial delivery of goods/performance of services.

3.3 If any documents are being prepared by the Company to enable the Contractor to carry out the order, it is the responsibility of the Contractor to request these documents in due time.

4. Health, Safety and Environmental Protection (HSE)

While performing the Contract, the Contractor is obliged to adhere to the HSE policies and the HSE requirements of GASCADE, which are available on the Internet on www.gascade.de. Where applicable the Contractor will be handed out project specific HSE requirements which concretize the aforementioned requirements before the Contract commences and Contractor shall adhere to those requirements.

5. Quality

5.1 The Contractor shall carry out and maintain effective quality assurance and, if requested, demonstrate this to the Company. The Contractor shall adhere to a quality management system as per DIN ISO 9000 ff. or to a similar system of equivalent standard if so requested by the Company. The Company shall have the right to inspect this quality assurance system, either itself or through third party agents.

5.2 Any changes to the goods or services to be delivered under the Contract require the prior written consent of the Company.

6. Testing and Inspection in the Course of Contract Fulfilment

6.1 The Company shall be entitled to carry out any tests or inspections at any time during the performance of the Contract by the Contractor. The

Company is authorized to visit the Contractor's works for this express purpose during the Contractor's usual business hours after giving prior notice. The Contractor and the Company shall each bear their own costs incurred in conducting any such inspection or testing.

6.2 Inspections/testing as well as the presentation of records resulting therefrom shall not constitute a waiver of any contractual or legal rights of the Company with regards to acceptance of the goods/services or of any defects therein.

7. Use of Subcontractors

Third parties (in particular any subcontractors) may only be employed or replaced by the Contractor with the Company's prior written consent. If the Contractor intends to use subcontractors to perform the Contract from the outset, the Contractor must inform the Company of this in its bid submission.

8. Shipping, Packaging, Passing of Risk

8.1 Delivery of goods shall be made DDP (Incoterms ® 2010) to the Delivery Point. The delivery shall be accompanied by two copies of the delivery note, the packing slip, inspection certificates according to the agreed specifications and all other required documents. The following details must be given in all shipping documents as well as on the external packaging, if known: order number, gross and net weight, number of components packaged and the type of packaging (disposable/ reusable), completion date as well as Delivery Point (unloading point) and recipient of goods. For projects, the complete job number and deployment building must be given as well.

8.2 For third country imports, the shipping documents must specify whether the goods are being delivered duty paid or duty unpaid.

If the goods are delivered duty unpaid, the Contractor must submit the following customs documents to the Company:

Dispatch document T1, shipping documents, customs invoice, preference documents such as Form A, EUR.1, A.TR, as well as certificate of origin.

If the goods are delivered duty paid, proof of customs clearance must be provided in the shipping documents (ATC number, tax invoice number).

8.3 The Contractor must uphold the Company's interests during delivery. Goods must be packed as so to avoid damage during transport. The Contractor is liable for any damage incurred due to improper packaging.

The Contractor shall, at the request of the Company, be responsible for collecting any packaging from the Delivery Point following delivery and disposing of it or having this done by a third party.

The Contractor must package, label and send hazardous products according to the relevant national and international regulations. A safety data sheet is to be handed over to the Company in the national language of the recipient country in accordance with Art. 31 EC Regulation No. 1907/2006/EC of the European Parliament and of the Council concerning the registration, evaluation and authorization (hereinafter "REACH regulations") of hazardous products as well as of non-classified hazardous products containing hazardous components in a concentration of more than 1%.

8.4 Up until the actual handover of the goods specified in the Contract together with the documents mentioned in clauses 8.1 and 8.2 at the Delivery Point, the Contractor shall bear the risk of accidental loss or damage. If a delivery inclusive of installation/assembly/service has been stipulated, the risk of loss or damage shall pass to the Company after the installation/assembly/service has been duly completed in accordance with the Contract and following the handover of the goods.

If a formal acceptance is stipulated by law or by the Contract, the deadline for acceptance shall be specified by both parties upon written request by the Contractor. The result of the acceptance inspection shall be documented in an acceptance certificate. Risk shall not pass from the Contractor to the Company before a successful acceptance has been confirmed by the Company in an acceptance certificate. Acceptance may not take place in any other manner, especially not through inspections, expert reports, certificates or records of work. Payment of invoice balances is not an indication of acceptance.

9. Origin of Goods

9.1 The Contractor shall provide a certificate of origin about the source of the goods upon the Company's request.

9.2 The goods must comply with regulations for the origin of goods as per the EC's preferential agreements insofar as the delivery is within the scope of preferential trade.

10. Condition of the Delivery/ Service, Complaints, Rights in the Event of Defects

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10.1 The Contractor is responsible for delivering goods and services free of defects and, additionally, for ensuring that guaranteed features are present. In particular, the Contractor guarantees that goods and services are delivered by qualified personnel and meet the current technical standards as well as the most widely recognized standards in plant safety, occupational medicine and hygiene. Goods and services delivered must also be in line with all relevant legal regulations, especially legal and administrative provisions, tax regulations and social security regulations, as well as regulations for work safety and environmental protection. If machines, equipment or plants constitute delivery items, they shall meet the special safety requirements applicable to machinery, equipment and plants at the time of delivery, and shall be CE marked.

10.2 The Contractor guarantees that all materials that the goods contain have been pre-registered, registered and approved in accordance with the relevant requirements of the REACH regulations. Furthermore, the Contractor shall ensure that all duties applicable to suppliers (in terms of Article 3 No. 32 REACH) must be fulfilled as specified in REACH in regard to the delivery of goods.

10.3 The Company shall notify any obvious defects to the Contractor within fourteen (14) days following receipt of the goods at the Delivery Point. Any defects that only become apparent at a later point in time must be notified by the Company within fourteen (14) days following their identification. The date of sending such notice to the Contractor shall determine whether or not such notice has been validly issued and the Contractor hereby waives its right to object to any delayed notice of defect.

10.4 In the event of any defects, the Company has the right to demand rectification of such defects according to applicable law. The mode of rectification shall be at the Company's discretion. For the purposes of the rectification, the goods shall be made available to the Contractor either at the Delivery Point or at the location where the goods were located when defects were identified, according to the Company's preference. The Contractor shall bear the cost of rectification and must execute rectification in all respects in accordance with the Company's instructions and requirements. If (i) rectification has not been effected within a reasonable period, (ii) rectification has failed, or (iii) it is not necessary by applicable law to fix a time period for rectification, the Company shall be entitled to claim further legal rights in the event of defects.

10.5 If (i) the Contractor does not fulfill its duty to rectify any defects as specified without having valid grounds to refuse to provide rectification, (ii) the Contractor seriously and irrevocably refuses to provide rectification, (iii) rectification has failed, (iv) there are fears of a loss of use of the goods, or (v) rectification may not be further postponed due to other reasons, the Company has the right to remedy the defects itself at the cost and liability of the Contractor, or allow this work to be undertaken by third parties. The Company is in this case entitled to demand compensation from the Contractor for the required measures. The applicable law shall apply in all other cases. Any additional rights of the Company concerning the Contractor's liability for defects or under any guarantees shall remain unaffected.

10.6 Claims under warranty shall become time-barred thirty (30) months after the passing of risk unless a longer expiration period is prescribed by law. The Company shall not be deemed to have waived any of its rights to make claims under warranty in the absence of an express written waiver.

11. Infringing Property Rights

It is the Contractor's responsibility to ensure that the delivery of the goods and/or performance of the services and the use thereof by the Company pursuant to the Contract will not infringe any patent laws, copyright or other proprietary rights of third parties. Notwithstanding legal claims, the Contractor shall indemnify the Company from any third party claims for which the Company may be held liable as a result of the infringement of any such property rights. The Contractor shall bear the cost of any licensing fees, expenses and fees incurred by the Company in preventing and/or rectifying any infringements of property rights.

12. Contract Penalty

If an agreed penalty is stipulated in the Contract, the Company is entitled to claim this up until the final payment is made.

13. Insurance

13.1 The Contractor shall maintain sufficient liability insurance at its own expense for damage for which it or its servants or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Company upon request. The Contractor's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

13.2 The Company shall insure items either on loan or rented from the Contractor against damage caused by fire and explosion.

14. Invoicing, Payment

14.1 The agreed prices stated in the Purchase Order are net of any statutory value-added tax. Invoices are to be issued for deliveries made and services provided. These invoices shall comply with the relevant statutory invoicing requirements according to the national value-added tax legislation to which the deliveries/services being invoiced are subject. When using self-billing (evaluated receipt settlement), the Contractor must transfer to the Company all data required as per the applicable value-added tax legislation specified in advance.

14.2 The invoice must include the Company's full order number and, if applicable, the Contractor's delivery note number. Certificates of work completed and any other records are to be submitted with the invoice. Invoices must correspond to the information in the Purchase Order in respect of the goods described, price, quantity, the order of the items and item numbers. Invoices are to be sent to the billing address specified by the Company in the Purchase Order.

14.3 The payment period shall commence as soon as an invoice, which complies with the aforementioned requirements, has been received at the billing address given by the Company in the Purchase Order. In the case of self-billing, the payment period commences the day the credit memo is issued. Payment will be made subject to verification of the delivery/service provided.

14.4 Payment by the Company shall not be an indication of acceptance of conditions or prices, and shall not constitute a waiver of the Company's rights in the event that defects in the goods or services or errors in the calculation of the price are subsequently discovered.

14.5 If the Company shall be obliged to bear the cost of licensing fees for foreign Contractors, the Contractor is required to submit a certificate of exemption pursuant to Section 50a of the German Income Tax Act.

15. Assignment of Contract, Change of Company Name, Offsetting, Retention

15.1 The Contractor may transfer the rights and responsibilities stipulated in the Contract to third parties only with the prior written consent of the Company.

15.2 The Contractor is required to notify the Company forthwith in writing of any assignment of the Contract by operation of law and of any change of its trade name.

15.3 The Company may transfer the rights and responsibilities stipulated in the Contract with the Contractor to BASF SE, Ludwigshafen (Rhine) or to any affiliated company as defined by the German Stock Corporation Act at any time without the Contractor's prior agreement.

15.4 The Contractor is only permitted to offset claims that are undisputed or substantiated by Court judgment. Contractor is only entitled to a right of retention with respect to goods/services under this Contract and only in order to secure claims arising under this Contract.

16. Termination, Rescission

16.1 The Contract may be terminated without notice for just cause constituting a serious breach of contract. Grounds for just cause shall, in particular but without limitation, include:

- A serious breach of duty by the Contractor which is not remedied within a reasonable period of time stipulated by the Company in writing when notifying the Contractor of the alleged breach;

- An application for bankruptcy proceedings has been filed for the assets of the other party to the Contract, or if the other party to the Contract is insolvent, facing threatening insolvency or ridden by debt as defined by Sections 17 to 19 of the German Insolvency Act., or the other party to the Contract cannot fulfill its obligation to pay taxes or social security contributions.

- The purchase or use of the goods or the services is or will be either entirely or partly impermissible due to legal or official regulations.

If the Company terminates the Contract for just cause and if other existing contracts between the Company and the Contractor cannot be maintained for the same grounds for just cause, the Company shall also be entitled to terminate such other contracts existing at the time of termination and contracts which have not yet been fulfilled on a pro-rata basis. In such events, the Contractor is not entitled to any further claims for damages, reimbursement of expenses or remuneration.

16.2 In the event of termination of the Contract by the Company, the Contractor must forthwith hand over to the Company any documents, records, plans or drawings acquired by the Contractor within the scope of or for the purposes of fulfilling the Contract.

16.3 These requirements apply likewise in the event of rescission.

17. Contractor's Removal Duty in the Event of Termination of Contract

In the event of termination of the Contract by the Company, the Contractor must, at its own expense and regardless of the grounds for termination, forthwith dismantle and remove from any site belonging to the Company where the Contract is being performed its plant, tools and equipment. Any waste or debris produced by the Contractor's work must be promptly removed and disposed of appropriately by the Contractor at its own expense. If the Contractor does not fulfill its duties in this regard, the Company may undertake the work itself or have it undertaken by a third party and charge the expenses incurred to the Contractor if the work has still not been completed after a reasonable period of time has elapsed.

18. Documents, Confidentiality, Rights of Use

18.1 The Contractor must submit to the Company the agreed quantity of any plans, calculations or other documents due to be provided by the Contractor under the Contract within the due time stipulated therefore.

18.2 The review of any documents by the Company shall not relieve the Contractor of any of its responsibilities under the Contract.

18.3 Any models, samples, drawings, data, materials and other documents provided to the Contractor by the Company (hereinafter "Company Documentation") shall remain the property of the Company and must be returned to the Company forthwith upon its request at any clause in time. The Contractor shall have no rights to retain any Company Documentation. The Contractor must observe the proprietary rights of the Company in and to all Company Documentation.

18.4 The Contractor is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the Contract, in particular the information given in Company documentation (hereinafter "Confidential Information"). The Contractor may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way, or use it for any purpose other than fulfilling the Contract. This obligation shall be subject to any disclosure requirements of a legal, judicial or official nature. The aforementioned confidentiality obligation shall continue to apply after the Contract has ended.

This confidentiality requirement shall not include any information that the Contractor lawfully possessed prior to the Company's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the Contractor shall not release such a person from its obligation to confidentiality. The burden of proof for such an exception lies with the Contractor.

The Contractor shall ensure that its employees and vicarious agents subject to this confidentiality agreement are obliged to confidentiality according to the rules set forth in these Conditions of Purchase by means of appropriate contractual agreements, too. Upon request, the Contractor shall demonstrate compliance with these obligations to the Company in writing.

The Contractor shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorized access. This includes in particular the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause 18. The Contractor is required to promptly notify the Company in writing in the event that Confidential Information is lost and/or accessed by unauthorized parties.

18.5 Any obligations to preserve the confidentiality of commercially sensitive information as defined by the Energy Industry Act and the duty to disclose non-discriminating information that may be commercially advantageous as defined by the Energy Industry Act shall not be affected by the aforementioned requirements.

18.6 The Contractor shall grant the Company freely transferable rights of use free from any restrictions as to area, content or time for all plans, drawings, graphics, calculations and other documents related to the Contract in all known media formats including electronic media, Internet and online media saved to all imaging, audio and data storage devices. This information may have either been prepared by the Contractor itself or by third parties (hereinafter "Work Results"). The Company has the right in particular to exploit, duplicate and distribute such Work Results wholly or in part as well as to modify them, revise them, or have the aforementioned activities carried out by third parties. The Company also has the right to grant third parties the same complete rights to use such Work Results wholly or in part inclusive of any intermediate changes and/or revisions.

The Contractor shall grant the Company the right of use for Work Results of the aforementioned scope including for all types of use whatsoever whether or not known at the time of Contract award. The applicable legal regulations shall apply in this regard.

In acquiring licenses and Work Results from intellectual services, especially studies, specifications, user requirement and functional design specifications, specific developments in and customization of software, the Company has the absolute and irrevocable right to use all such Work Results at the Company's premises at BASF SE in Ludwigshafen (Rhine), and at the premises of all affiliated companies as defined by the German Stock Corporation Act.

19. Storage and Review of Documents

The Company has the right to view and make copies or duplicate for its own purposes all documents in connection with the delivery of goods or provision of services during usual business hours. This right remains valid for the safekeeping period as defined by the law – at least three (3) years starting from the date of acceptance or delivery. The Contractor is obliged to provide assistance with reviews. To the extent to which these documents contain confidential information about the Contractor such as company internal calculations, agreements or confidential information about business partners and/or employees, the Company's viewing rights shall be barred.

20. Environmental, Labor and Social Standards

The Company conducts its business in accordance with the principles of sustainable development and complies with internationally recognized fundamental environmental, labor and social standards. The Company has described and set forth its understanding and implementation of these standards in its Values and Principles (www.gascade.de) and Code of Conduct (www.gascade.de). The Company expects likewise that the Contractor will comply with environmental, labor and social standards. Should the Company discover that the Contractor is in breach of these standards, the Company reserves the right to terminate this contract – without notice, if necessary – on account of national circumstances. Furthermore, the Contractor shall be obliged to ensure that all its subcontractors of any tier shall also observe these standards likewise.

21. Publicity Ban, Severability Clause, Applicable Law, Place of Jurisdiction

21.1 The Contractor may only refer to or otherwise publicly disclose its business relationship with the Company with the prior written consent of the Company.

21.2 The invalidity or unenforceability of any provision or part of a provision of this Contract shall not affect the validity of the entire Contract.

21.3 The Contract shall be governed by and interpreted in accordance with the substantive law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) adopted 11 April 1980 and the German law rules on choice of law principles or the conflict-of-laws.

21.4 At the Company's option the place of jurisdiction shall be either the court functionally responsible for the Company's registered office or the court responsible for the applicable general legal regulations.