

PURCHASING CONDITIONS



Fronius International GmbH valid from 01/06/17

1. Applicability

- 1.1. Our orders (contracts) and/or the purchase of goods or services are governed exclusively by these General Purchasing Conditions; where there are no applicable provisions, the legislation shall apply exclusively. Differing sale and delivery conditions of the Contractor shall only be binding upon us in the event that we expressly confirm these in writing or by fax.
- 1.2. In accepting and/or executing our orders (contracts), the Contractor acknowledges the exclusive applicability of our General Purchasing Conditions.
- 1.3. These Purchasing Conditions also apply, without limitation, to all subsequent orders.

2. Quotations

- 2.1. The Contractor must adapt the quantities and the composition exactly to our request; any differences must be clearly highlighted. If rough quantities (e.g. "approximately") are mentioned in the request, the Contractor shall agree to these quantities being exceeded or fallen below in our orders to a small extent that is proportionate with the order sum.
- 2.2. Offers and quotations, cost estimates, plans, test certificates for technical equipment and all other documents are always to be drawn up free of charge.

3. Order and order confirmation

- 3.1. Irrespective of any quotations from the Supplier, contracts shall only come into being with the content of our orders submitted in writing, by fax or by email. Our orders shall only be valid if they state a Fronius order number. Verbal orders or those made by telephone, as well as additions, changes and deviations of any type, shall only be binding upon us once we confirm them in writing or by fax or email. The order date is the date of our order, but in the case of verbal orders or those made by telephone, the date of our written confirmation.
- 3.2. Our orders must be confirmed by the Contractor in writing and stating our order number within the time period specified by us, and otherwise no later than within 2 working days from the order date. A contract shall only come into being if the Supplier clearly highlights any deviations from our order in the order confirmation and we expressly confirm these deviations in writing or by fax or email. Acceptance of the goods without reservations shall not be deemed consent to any deviations. If the order confirmation is not received by the deadline, but the Contractor nevertheless delivers the goods, the contract shall come into being with incorporation of our Purchasing Conditions and with the content of our order.
- 3.3. With acceptance of our order, the Contractor guarantees to execute it in a professional manner; in particular, all manufacturing must correspond exactly to the drawing attached to the order.

4. Delivery period or performance period

- 4.1. The delivery or performance period shall commence with the order date. If no time period is agreed, the delivery or service must be provided immediately.
- 4.2. If a delay in provision of the delivery or service is to be expected, we must be notified of this immediately, stating the reasons and the predicted duration of the delay, in writing, by fax or email.
- 4.3. A delivery or service more than one day prior to the agreed deadline is only permitted with our consent. In any case, such a delivery or service must not result in any disadvantage for us; in particular the payment and discount period (15.2) shall not commence prior to the originally agreed date.
- 4.4. We reserve the right to postpone the delivery or performance date, but shall notify the Contractor of this no later than three weeks before the agreed date, in writing, by fax or by digital data communication.

5. Delivery, acceptance and insurance

- 5.1. The Contractor must make the ordered goods (work) available to us in accordance with the order, at its costs and risk, at the storage, installation or utilisation site to be determined by us ("DDP" in line with Incoterms 2010); this applies unrestrictedly also to dangerous goods within the meaning of the relevant applicable Austrian law on the transport of dangerous goods. We will not accept cash-on-delivery consignments. The consignment must be accompanied by a packing note, and furthermore a separate delivery note stating the order and item numbers and, where appropriate, a copy of the drawing connected with the order must be enclosed for each order number. If failure to comply with these obligations results in any disadvantage for us, the Contractor shall be liable for this.
- 5.2. The supplied items must be handed over to our authorised employees at the destination. In quantitative terms, acceptance of the items takes place when they reach the destination, but in qualitative terms, acceptance does not occur until they are processed or used. Our employees are not authorised to confirm at the time of handover that the items are free from quality defects. Nevertheless, if an employee confirms that they have received the items in good order, this declaration does not under any circumstances extend to whether the items are free from quality defects.
- 5.3. The Contractor must insure the delivered goods sufficiently against all types of damage or loss, at the Contractor's expense; the Contractor must provide us with proof of conclusion of these insurance policies and, if insured events occur, assign the claims from these insurance policies to us, at our request. If the Contractor does not immediately provide proof that it has taken out such insurance policies, we shall be entitled to take out these insurance policies at the Contractor's expense, after a one-month period of grace has passed to no effect.
- 5.4. Products that are subject to special product regulations, such as the Austrian Chemicals Act, must be classified, packaged and labelled in line with the regulations.
- 5.5. When delivering technical systems and devices, our operating personnel must be trained at no additional cost (i.e. as part of the agreed fee). When delivering systems and devices that are to be assembled by third parties, the necessary assembly plans in German (including all connections, any special base requirements, etc.) must be attached to the order confirmation.
- 5.6. In the case of deliveries from abroad, the labelling must be in German; the operating regulations and instructions must be written in German.

6. Packaging, labelling and dispatch; declaration of release from obligation; problem substances

- 6.1. Irrespective of the Incoterm agreed, the Contractor must package, label and dispatch the ordered goods (work) in a suitable manner at its expense and risk; this also applies without restriction to dangerous goods (5.1). Here the relevant applicable EU and Austrian provisions must be observed at all times. In the event that, in an exceptional case, we accept the packaging costs, these original costs must be charged to us and shown separately on the invoice; even in this case, the Contractor shall be liable for the risk from the consequences of packaging or labelling that is inadequate or contrary to the regulations. If claims are brought against us by third parties due to packaging, labelling and/or dispatch of the goods (work) that is inadequate or contrary to the regulations, the Contractor shall

indemnify us and hold us harmless in full measure.

- 6.2. Insofar as the Contractor participates in a nationwide packaging disposal system within Austria (such as for example the system from ARA = Altstoff Recycling Austria AG), the following legally binding declaration must be included in the quotation, but also on every delivery note and on every invoice: "The packaging of all listed goods is released from the obligation via licence number...". We shall not recognise any additional charges or costs, such as deposits or disposal costs. If the Contractor fails to make such a declaration of release from the obligation, it must collect or take back the packaging material and provide a credit note for this; if the Contractor does not comply with this obligation, we shall be entitled to arrange for disposal to be carried out by third parties, at the risk and expense of the Contractor.
- 6.3. The Contractor must always personally dispose of all delivery objects that are to be deemed "hazardous waste" following the intended use, and/or the remains of such delivery objects, or take back these for disposal, at its risk and expense. If the Contractor does not comply with this obligation, we shall be entitled to arrange for disposal to be carried out by third parties, at the risk and expense of the Contractor.
- 6.4. Where goods are shipped on pallets, the Contractor must use special EUR pool pallets, which will be exchanged when we take delivery of the goods.
- 6.5. Where the packaging contains wood, this must comply with the applicable community-law (EU) phytosanitary regulations.
- 6.6. The packaging used by the Contractor must not exceed a size of 1230 mm (length), 850 mm (width) and 1300 mm (height) per package. If this is not possible, additional packages must be created.

7. Passing-on of order to a third party

- 7.1. Our order must not be passed on to any other contractor for execution, either in its entirety or in part, without our written consent.

8. Drawings, tools, moulds, models, etc.

- 8.1. The samples, models, drawings, sketches, tools, moulds and other aids made available to the Contractor for drawing up quotations or to carry out orders from the Customer shall remain the property of the Customer; the Customer holds the copyright for such objects. If the Contractor is required to produce objects of these type for such purposes at the Customer's expense, the Contractor shall purchase the necessary materials in the name of the Customer and also arrange for these to be delivered for the Customer; the purchase price must be invoiced directly to the Customer by the upstream supplier and credited against the price (15.), firstly against any down payment. With payment for the materials, ownership of the objects to be produced, even if they have not been completed, is transferred to the Customer, who also holds the exclusive right of use to said objects.
- 8.2. Such objects must be treated as confidential and must not be made available to third parties or used for other purposes, including for advertising purposes; the objects will be made available to the Contractor for the intended use only for as long as this is necessary for execution of the order. They must be handed over to the Customer immediately upon delivery (performance) and/or in the event that the order is revoked (withdrawal from the contract), and otherwise at the Customer's request.

9. Confidentiality regarding data and business secrets

- 9.1. The Contractor shall accept responsibility for the obligation to maintain confidentiality for itself and all persons working for it, with regard to all information and company secrets that have become known to it and/or to these persons in connection with the conclusion and fulfilment of this contractual relationship. In order to carry out its contractual obligations, duties and other tasks, the Contractor may only call on persons on whom the Contractor can prove it has expressly imposed the obligation to maintain confidentiality with regard to this information and these company secrets prior to starting the work. News items or other communications relating to the order may only be passed on with the consent of the Customer.
- 9.2. The obligation to maintain confidentiality with regard to all information and company secrets, and to impose said obligation on others, shall remain in place without restriction even after the contractual relationship comes to an end; it shall also extend to the information and company secrets that are first entrusted or otherwise made available to the Contractor and/or to the persons mentioned in 9.1 on the occasion of further contractual negotiations, even if these negotiations do not lead to the conclusion of any contract.
- 9.3. For this order, the Customer grants consent to the information from this business case being passed on to third parties – insofar as this is necessary for processing of the contract. This consent shall be deemed to have been granted when the order is accepted and shall come to an end when the contract is fulfilled. At the same time, the Contractor grants consent to information from this business case also being passed on to companies that are affiliated with the Customer.

10. Industrial property rights

- 10.1. The agreed purchase price pays for the acquisition of the industrial property rights (and in particular of patents) to the extent that such acquisition is necessary in order that we may freely use, partly or completely remake, and resell the object(s) supplied.
- 10.2. Where licences are necessary, the Contractor must obtain these. We may use any inventions made by the Contractor while executing our order, free of charge.
- 10.3. In the event that any third-party protective rights are infringed in connection with the ordered delivery or service, the Contractor shall indemnify us and hold us harmless.

11. Delay, withdrawal and contractual penalty

- 11.1. In the event of a delay in the delivery or service, or in the case of a delivery or service that does not comply with the contract, we – notwithstanding all other claims – shall be entitled either to withdraw from the contract immediately, giving a grace period of 14 days, or to insist that the contract is fulfilled. We shall hold the same rights if an application from the Contractor to open insolvency proceedings is rejected due to a lack of sufficient assets to cover the costs.
- 11.2. Furthermore, in the event of a delivery or service that is delayed or does not comply with the contract, we shall be entitled to demand a contractual penalty amounting to a maximum of 10% of the total order sum instead of contractual performance, or a contractual penalty of 1% of the total order sum for each commenced week by which the delivery or performance deadline has been exceeded, up to a maximum of 10%, in addition to delayed performance. In all cases, we reserve the right to request the contractual penalty, but also damages exceeding this amount, irrespective of the amount of the order sum, and even if we accept the delayed delivery or service.
- 11.3. We shall also be entitled to the contractual penalty even if the Contractor is not to blame for exceeding the delivery or service period. However, if the delay is due to *force majeure* or circumstances falling within the Contractor's area of risk (e.g. the Contractor's delayed cooperation, etc.), its obligation to pay the contractual penalty shall remain in place; yet if the Contractor issues notification of such circumstances immediately and provides evidence of these at the request of the Customer, the delivery or service period and/or the delivery or service deadline shall be extended by the time for which these circumstances had an effect; in this case, the agreed contractual penalty thus ensures – except where unreasonable – compliance with the time period requested in this

manner and/or the deadline extended in this way. Legal strikes and situations where it is advised that materials, parts or finished products are only fit for scrap shall not be regarded as *force majeure*.

- 11.4. The above provision regarding contractual penalties in the event of delayed fulfillment shall also apply – without limitation – to contractual penalties agreed for other reasons (for example in order to ensure special attributes).
- 11.5. Until no later than two months before the agreed delivery or performance date (i.e. before the end of the agreed delivery or performance period), we shall be entitled to withdraw from the Contract with regard to any items delivered or services performed or any parts of these items or services which – owing to technical modifications, changes to the piece-lists, changes to the forecast planning, or any other comparable reasons – are no longer used; in this case, compensation claims from the Contractor shall be excluded.

12. Transfer of risk

- 12.1. The risk is always transferred to us only when the Contractor has handed over the delivery (service) to our authorised employees (5.2), these employees have inspected the delivery (service) at the destination and have accepted it as in good order, and the Contractor has also fully satisfied all additional obligations, such as provision of the necessary test certificates, descriptions, operating instructions or user manuals, copies of the drawings connected with the order and all other necessary documents, together with assembly, commissioning, briefing and all other measures that are necessary in individual cases.

13. Warranty and guarantee

- 13.1. The Contractor's deliveries and services must always comply with the general and specific standards applicable in Austria, for example those for employee protection, environmental protection and in the area of safety technology, but also with the generally recognised engineering practices, the requirements of the Accident Prevention Service of the General Accident Insurance Body [*Allgemeine Unfallversicherungsanstalt*] (A-1200 Vienna, Adalbert-Stifter-Straße 65) and the quality specified by the Customer, even if the intended purpose has not been disclosed to the Contractor. The regulations on the transport of hazardous goods and on hazardous waste, as well as specific storage and operating provisions, must be observed exactly; to this extent, the Contractor shall also be liable to the Customer for due care and the provision of information.
- 13.2. Irrespective of longer statutory or contractual periods, the warranty period shall be two years. This period of time shall not begin prior to qualitative acceptance (5.2), but no later than three full years from the transfer of risk (12.).
- 13.3. We reserve the right to decide whether we wish improvement, a replacement item, a price reduction or – where it is not a minor defect – conversion. If we request improvement, the Contractor must immediately rectify any defects that arise during the warranty period at its risk and expense. At our request, the Contractor must immediately replace defective parts of the delivery or service with ones that are free from defects, at its risk and expense. In urgent cases, we shall also be authorised, with the agreement of the Contractor, to rectify defects ourselves without a grace period, at the Contractor's expense, or to arrange for such defects to be rectified by third parties, without this affecting our claims due to these defects; if a delay poses a danger, we can proceed in this manner even without the agreement of the Contractor. If a grace period must be taken into consideration or set, a 14-day period is regarded as appropriate.
- 13.4. The Contractor expressly guarantees us freedom from defects during the warranty period.
- 13.5. The Contractor waives the objection of belated notification of defects, regardless of whether such defects are overt or covert. Payments shall not be regarded as waiving warranty claims.

14. Damages and product liability

- 14.1. We shall be entitled to damages and claims for recourse, including all claims pursuant to the Austrian product liability regulations, without reduction. We reserve the right to decide whether, due to the defect in the delivery or service itself, we firstly wish either improvement, replacement of the item, or immediate financial compensation. If we request improvement, the Contractor must immediately rectify the defects at its risk and expense. At our request, the Contractor must immediately replace defective parts of the delivery or service with defect-free parts, at its risk and expense. With all types of damage, throughout the entire duration of the statute of limitations, the burden of proof shall be on the Contractor to show that it is not to blame for the damage. Exclusions or restrictions of liability and the obligation to impose these on third parties have not been agreed to our disadvantage. The Contractor shall also be liable for fault on the part of its upstream suppliers, as for fault on its own part.
- 14.2. In the event that claims are brought against us by third parties under product liability legislation on account of defective material, the Contractor shall indemnify us and hold us harmless in full measure.
- 14.3. The Contractor is obliged to provide us with a complete but easily understandable instruction manual (operating instructions) in German, to retain all necessary documents in safekeeping, to ensure precise monitoring of the product, and also – where necessary – to recall faulty goods at its own expense, immediately handing over the production documents and rendering all reasonable assistance, as well as naming the manufacturer or importer within 14 days.
- 14.4. In the event that it commissions any sub-suppliers, the Contractor shall be liable for ensuring that delivery is carried out in line with the conditions agreed with us. The Contractor shall be liable for the conduct of its sub-suppliers as for its own conduct.

15. Price and payment conditions; offsetting

- 15.1. All prices are fixed prices and net prices within the meaning of Article 11 of the 1994 Value Added Tax Act [*Umsatzsteuergesetz 1994*]. In line with point 5, the prices are valid free to the installation or usage location (Incoterms 2010 – "DDP").
- 15.2. In the case of payment – including of each individual partial invoice – within 30 days, we shall be entitled to a 3% discount; otherwise, the invoice amounts shall be payable within 60 days. The payment periods are – subject to our rights in line with 4.3 – to be calculated from the date of receipt of the invoice that complies with our conditions (particularly 16.); however, if the risk (12.) is not transferred to us until a later date, the payment periods shall be calculated from the date of the transfer of risk. Furthermore, the payment periods shall only start once the contractual deliveries and services have been provided without defects. In addition, invoices that contravene our conditions shall not trigger the payment periods. Payments shall not be regarded as waiving the right to assert defects and claims for compensation.
- 15.3. The Contractor has based the agreed price on a well-founded cost calculation, and price increases are therefore not to be expected for subsequent orders. The positive results of the potential savings brought about by the collaboration shall be taken into consideration in the pricing for subsequent orders.
- 15.4. At any time, we shall be entitled to offset claims of any type held by us or by companies within our Group (particularly our subsidiaries) against the Contractor, against the Con-

tractor's accounts receivable. Only the prices agreed in the contract between the parties may be offset. No subsidiary agreements exist.

- 15.5. If the Contractor is a consortium it shall, when the order is placed, make known a bank account into which all payments due under this order can be made with debt-discharging effect.
- 15.6. We shall be entitled to pay by bank transfer, cheques or three months' acceptance, as we wish. The payment deadline is met if the amount owed is value dated to the account specified by the Supplier when it falls due.
- 15.7. If payments are not made in line with the deadlines, we shall be charged default interest in accordance with Article 456 of the Austrian Commercial Code [*Unternehmensgesetzbuch*] for the outstanding amount from the end of the payment period onwards. Any claims for compensation that exceed the limit in Article 458 of the Austrian Commercial Code shall be excluded, unless gross negligence on our part can be proven.

16. Invoicing – notice of assignment

- 16.1. Invoices are always to be submitted in one copy, stating the order number. In invoices for deliveries of goods, the dispatch type must also be specified. Furthermore, invoices for work must be accompanied by copies of the confirmed pay slips or time sheets.
- 16.2. In the case of intra-Community purchase transactions, a Contractor from another EU member state must not invoice any value-added tax, but must quote both its own VAT exclusion number (VAT ID No.) and that of Fronius International GmbH (ATU52614407) in its invoice.
- 16.3. The Contractor shall be liable for compliance with the obligations incumbent on it under tax law, and if it breaches these obligations it shall indemnify us and hold us harmless. The Contractor shall not be entitled to assign or pledge claims held against Fronius International GmbH in whole or in part.
- 16.4. If a claim outstanding against us has been assigned, then any notification of such assignment shall be made solely by way of an annotation highlighted in boldface type on the invoice.

17. Jurisdiction and applicable law

- 17.1. The exclusive place of jurisdiction for all legal disputes arising from or in connection with the contract is the local competent court in Wels. Notwithstanding this, Fronius International GmbH shall be entitled to bring legal actions against the Contractor at its general place of jurisdiction.
- 17.2. This contract shall be governed by Austrian law, excluding the UN Convention on Contracts for the International Sales of Goods.
- 17.3. In the event of a dispute, the Contractor is not entitled to withhold – let alone discontinue – performance of its contractual obligations.

18. Non-solicitation agreement

- 18.1. In the period extending from the conclusion of the contract until a full twelve months after it has been completely fulfilled, the Contractor shall not solicit, hire or otherwise employ any of our employees, whether directly or indirectly, either for itself or for any third party.
- 18.2. If the Contractor infringes this obligation, we shall be entitled to require it to pay liquidated damages amounting to six times the gross monthly salary of the employee in question, for every single instance of infringement.

19. Certifications

- 19.1. The Contractor is aware that we hold certificates in accordance with ISO 14001, OHSAS 18001 and ISO 9001, and accordingly the Contractor undertakes to comply with these certificates and with all applicable statutory provisions when carrying out work in connection with performance of the contract, and to ensure that its upstream suppliers also undertake to comply. The Contractor shall introduce appropriate management systems within the framework of what is possible for it. The Contractor undertakes to adhere to the principles of the UN's Global Compact Initiative (www.unglobalcompact.org) and to comply with the Modern Slavery Act 2015 (www.legislation.gov.uk).

20. Final provisions

- 20.1. All notifications to Fronius International GmbH must be set out in writing.
- 20.2. All business correspondence must be conducted solely with our Purchasing Department.
- 20.3. Our order number must always be quoted (or arrangements made to ensure that it is quoted) on all papers intended for us – such as bills of lading, adhesive labels affixed to rail wagons, rail crates, postal packet cards, dispatch notes, delivery notes, packing slips, invoices, notifications of changes etc. – and in all items of correspondence. The Contractor shall be liable to us for any disadvantage incurred as a result of failure to comply with this obligation.
- 20.4. In all of the correspondence, but particularly in labels, product descriptions, user manuals and operating instructions, etc., the German language must always be used.
- 20.5. With regard to the collaboration, the Contractor may only use the business relationship for advertising purposes after first obtaining written consent from the Customer. This consent may be revoked at any time without stating reasons and shall result in immediate deletion/discontinuation of further use (for advertising purposes, reference lists, press releases, etc.) without any entitlement to reimbursement of costs.

Company headquarters – Management

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