

General Terms and Conditions of Purchase: Siteco GmbH

(Status: August 2020)

Article I: Definitions

- The following definitions shall apply within the context of these General Terms and Conditions of Purchase:
 - "CONTRACTED SUPPLIER"** means the supplier of the GOODS/ SERVICES.
 - "PROPRIETARY RIGHTS"** means commercial proprietary rights and copyrights of third parties.
 - "STANDARD PRODUCTS"** means products of the CONTRACTED SUPPLIER or a third party that correspond to the respective published product catalogues.
 - "SERVICES"** means services of the CONTRACTED SUPPLIER which are not based on physical products (e.g. lighting design, removal and installation of luminaires and electrical equipment, lighting controls, digital applications, initiating operations etc.).
 - "SITECO"** means Siteco GmbH, Georg-Simon-Ohm-Str. 50, 83301 Traunreut, Germany, registered at the local district court of Traunstein with the commercial registration number of 27821.
 - "SPECIFICATION"** means the technical specification and/or approval (including certification, declaration of conformity etc.) of GOODS/SERVICES.
 - "PACKAGING"** means packaging for transport (section 4 of the German regulation on packaging – *VerpackV*), outer packaging (section 5, *VerpackV*) and sales packaging that is accumulated by commercial end users (section 7, *VerpackV*).
 - "GOODS/SERVICES"** means the supply of materials, semi-finished products, tools, software and STANDARD PRODUCTS as well as the provision of SERVICES.
- Definitions that vary apply only if expressly confirmed in writing by SITECO.

Article II: General provisions

- The supply relationship between SITECO and the CONTRACTED SUPPLIER in connection with GOODS/SERVICES shall be exclusively governed by these General Terms and Conditions of Purchase. General Terms and Conditions of the CONTRACTED SUPPLIER shall apply only to the extent that SITECO has expressly agreed to them in writing. The scope of the GOODS/SERVICES shall be determined by the mutually agreed on written statements.
- Required documentation for GOODS/SERVICES shall be provided by the CONTRACTED SUPPLIER in electronic form (i.e. in PDF format).
- Incoterms from 2020 shall apply.
- The privacy policy and the information on information security of Siteco can be viewed at <https://www.siteco.de/de/service/download/rechtliche-dokumente>

Article III: Offer

- The CONTRACTED SUPPLIER submits a complete offer for all GOODS/SERVICES upon request.
- For SERVICES,
 - the offer shall be made on the basis of unit prices per service item, including all service charges; quantity-dependent price ranges for unit prices are possible. The costs for wages and materials are to be listed separately for each service item.
 - Materials provided by SITECO must be identified as such in the offer.
 - All materials required for performing the service must be provided by the CONTRACTED SUPPLIER. The relevant compensation for this is included in the price offered.
 - Additional costs incurred by the CONTRACTED SUPPLIER for construction all risk insurance and erection all risk insurance shall be shown separately in the offer.

Article IV: Placing and confirming orders

- SITECO may cancel the order at any time up to the point of written acceptance by the CONTRACTED SUPPLIER (contract confirmation).
- If the contract confirmation or the GOODS/SERVICES deviate from the order, it shall constitute a new offer from the CONTRACTED SUPPLIER that shall be deemed accepted only if confirmed in writing by SITECO. The same applies to changes or additions to the order.
- When submitting GOODS/SERVICES offers for several sub-projects of an associated overall project, SITECO shall also be entitled to only make awards for sub-projects. Should several sub-projects be awarded, discounts or special prices can be allotted; their limited validity must be made clear.
- If the CONTRACTED SUPPLIER's creditworthiness deteriorates after conclusion of the agreement, SITECO shall be entitled to withdraw from the assignment or to demand the provision of adequate collateral.

Article V: Period of delivery and performance, lump-sum compensation, subsequent changes to services

- Delivery dates are fixed deadlines. The timeliness of deliveries of GOODS/SERVICES excluding SERVICES shall be determined by receipt of the delivery at the receiving location indicated by SITECO. The timeliness of GOODS/SERVICES including SERVICES shall be determined by their formal acceptance.
- SITECO must be notified immediately should a delay in delivery or in performance of a service become apparent.
- Weather conditions (with the exception of force majeure) will not to be taken into account.
- Should a default occur, SITECO shall be entitled to demand compensation for damage caused by default as a lump-sum amount totalling 0.3% of the gross value of goods to be delivered per workday but not more than 5% of the gross value of goods to be delivered. In doing this, SITECO does not have to prove that any damage had been caused by the delay. The CONTRACTED SUPPLIER shall be entitled to prove that SITECO has not incurred any damage or a significantly limited amount damage due to the delay. SITECO reserves the right to claim compensation for damages caused by default that exceed the lump-sum amount.
- Should it become necessary to change the GOODS/SERVICES after conclusion of the agreement, SITECO will inform the CONTRACTED SUPPLIER accordingly. The CONTRACTED SUPPLIER will immediately inform SITECO of the consequences resulting from the change. Upon confirmation of the consequences by SITECO, the CONTRACTED SUPPLIER will provide the modified GOODS/SERVICES. If no consequences are communicated in writing or if the right has been reserved to later assert such consequences, it shall be agreed the change is deemed neutral in terms of costs and deadlines.

Article VI: Transfer of risks, shipping costs, logistics, transport, insurance

- All deliveries of the CONTRACTED SUPPLIER shall be made in accordance with the Incoterm DAP delivery address as per the order, with the following exception: Deliveries subject to customs duties transported by sea and inland waterway are sent FOB. Partial deliveries are not permitted.
- For GOODS/SERVICES including SERVICES, the risk shall pass to SITECO upon formal acceptance; for GOODS/SERVICES excluding SERVICES this shall follow in accordance with the agreed Incoterms. If no Incoterms have been agreed to, the risk shall pass to SITECO upon unconditional acceptance.

3. The delivery conditions specified by SITECO (e.g. pallet dimensions etc.) must be observed. The shipping and packaging costs shall be borne by the CONTRACTED SUPPLIER. Additional costs for expedited transport incurred to meet a delivery deadline shall be borne by the CONTRACTED SUPPLIER unless the need for the expedited transport lies within the scope of SITECO's responsibility.
4. All deliveries must be accompanied by packing or delivery slips that list the contents as well as the complete purchase order numbers. Otherwise, SITECO shall be entitled to refuse acceptance. Notification about the shipment shall follow immediately and include the same information.
5. The CONTRACTED SUPPLIER shall handle logistics and transport, including (intermediate) warehousing – of all materials required for the contract (including any materials that may be provided by SITECO).
6. The CONTRACTED SUPPLIER shall continuously maintain the following types of insurance with a reputable insurance company until the expiration of all claims arising from the business relationship between the CONTRACTED SUPPLIER and SITECO and shall provide evidence of such insurance upon request by SITECO:
 - a. Extended business and product liability insurance with a minimum coverage of €5 million per claim and year.
 - b. For handling materials to be installed that have a value of more than €100,000, additional construction all risk insurance and erection all risk insurance, each in the amount of the gross value of the agreement.

Article VII: Invoices

Invoices must include the purchase order numbers as well as the individual item numbers. Invoices are not payable as long as these details are missing. Copies of invoices must be marked as "duplicates".

Article VIII: Terms of payment, default, set-off, surety, security retainer

1. Payments made within 14 days shall receive a 2% discount, otherwise net payment must be received within 60 calendar days.
2. The term of payment shall commence as soon as the GOODS/SERVICES have been provided in full and free of defects, and a verifiable invoice has been received. A cash discount deduction is also permitted if SITECO offsets or withholds or reduces payments in an appropriate amount due to defects. The term of payment shall commence after defects are completely eliminated or the reduction has been declared.
3. Payments do not constitute recognition that the GOODS/SERVICES are in conformity with the agreement.
4. If, in the case of SERVICES, instalment payments are contractually agreed on according to the stage of completion, these shall only be due for payment at the point the CONTRACTED SUPPLIER submits, on the first request, a performance bond issued by a reputable bank in the amount of the respective instalment payment.
5. For SERVICES with a net order value starting at fifty thousand EURO (€50,000), SITECO will withhold a security retainer for warranty claims on the final invoice in the amount of 5% of the gross order value for the duration of the warranty or guarantee plus one year. The CONTRACTED SUPPLIER can avert submitting the security retainer by providing a performance bond issued by a reputable bank in the amount of the security retainer on the first request.

Article IX: Claims for defects

1. Complaints in accordance with section 377 of the German Commercial Code (*HGB*) for obvious defects are valid when made within one month of delivery. Claims for defects first detected during processing or use (hidden defects), are valid when made within one month of their detection.
2. Claims made by SITECO due to material defects expire no earlier than after two years unless the law provides for longer periods. The term shall commence with the transfer of risk, however not before receipt of a verifiable invoice.
3. For direct deliveries to SITECO's contractual partners or to other locations where SITECO executes contracts outside of its plants and factories, the period of limitation shall commence upon acceptance by SITECO's contractual partner, however no later than one year following delivery to the location in question.
4. In the event of defects, the rights of SITECO shall be exercised in accordance with the law. To the degree it comes into consideration, a self-remedy can be carried out at the CONTRACTED SUPPLIER's expense without setting a time limit, except in specific cases stipulated by law, if the CONTRACTED SUPPLIER has delivered after the occurrence of default or if SITECO carries out the self-remedy to avoid its own default with respect to a contractual partner.

Article X: Guarantees

1. The CONTRACTED SUPPLIER guarantees that
 - a. the GOODS/SERVICES:
 - Reflect the state of the art in science and technology at the time of delivery/performance as well as the applicable laws (in particular the EU RoHS Directive and the German Electrical and Electronic Equipment Act – *ElektroG*).
 - Are free of flame retardants of the types polybrominated biphenyls (PBBs) and polybrominated biphenyl ethers (PBDEs/PBBEs).
 - Do not violate any PROPRIETARY RIGHTS. The CONTRACTED SUPPLIER indemnifies SITECO, its employees and SITECO contractual partners and will provide SITECO or its contractual partners at no charge a right of use which ensures unlimited and unhindered use of the GOODS/SERVICES. SITECO shall be entitled to acquire any necessary rights of use at the CONTRACTED SUPPLIER's expense.
 - Are not subject to the reservation of proprietary rights.
 - Have a 10-year original spare parts availability. For systems comprising several components, a similar component with the same function and at least the same quality can be used (replacement), provided no obstacle applies in the individual case. Costs arising from an assessment of the applicability or problems associated with a replacement shall be borne by the CONTRACTED SUPPLIER.
 - b. All legal and regulatory provisions shall be complied with, in particular with regard to occupational safety and minimum wage requirements.
2. Further guarantees and assurances of the CONTRACTED SUPPLIER remain unaffected.

Article XI: Quality assurance

1. The CONTRACTED SUPPLIER must ensure the following quality assurance measures are in place:
 1. A quality assurance management system shall be established that is maintained throughout the entire business relationship. The CONTRACTED SUPPLIER shall disclose this at SITECO's request.
 2. The quality of the GOODS/SERVICES shall be continuously controlled independently of an initial sample inspection and approval by SITECO. At SITECO's request, the CONTRACTED SUPPLIER shall provide an explanation about the quality tests as well as the status of the testing technology and, if necessary, adapt this to meet SITECO's specifications.
 3. The CONTRACTED SUPPLIER shall execute an outgoing goods inspection/final acceptance for all GOODS/SERVICES.
2. The CONTRACTED SUPPLIER shall bear the costs for quality assurance measures.

Article XII: Transfer of agreements, sub-contracted suppliers

The CONTRACTED SUPPLIER is neither entitled to transfer agreements to third parties nor to have GOODS/SERVICES provided by third parties without the prior written consent of SITECO. Should this nevertheless be the case, SITECO shall be entitled to withdraw from the agreement in whole or in part as well as to claim damages.

Article XIII: Provision of materials

The materials provided remain the property of SITECO and shall, at no cost, be securely and separately stored from other items, labelled, properly managed and insured. Their use is only permitted for SITECO orders. In the event of a decrease in value or loss, the CONTRACTED SUPPLIER must provide compensation. This also applies to the invoiced transfer of allocated material.

1. The CONTRACTED SUPPLIER shall promptly inspect and verify the materials provided – any objections shall be immediately communicated to the contracting party in writing.
2. Processing or reforming the material is carried out for SITECO. SITECO shall co-own the products manufactured using the materials or parts it provides in proportion to the value of the materials provided to the value of the entire product. The CUSTOMER shall store the new item for SITECO at no charge and with the care of a prudent merchant.

Article XIV: Tools, moulds

Tools and moulds furnished or ordered by SITECO are the property of SITECO and must be marked accordingly as well as treated with care. Maintenance work arising during production shall be independently carried out by the CONTRACTED SUPPLIER at the CONTRACTED SUPPLIER's own expense.

Article XV: Rights of use for software

1. Should the GOODS/SERVICES include software, regardless of whether it is provided separately or in conjunction with the relevant hardware, the following provisions in this article shall apply:
2. SITECO receives from the CONTRACTED SUPPLIER a license to use the software for an unlimited period of time and location and is entitled to resell the software
3. Without having been requested to do so, the CONTRACTED SUPPLIER shall provide SITECO with all licence terms applicable to the GOODS/SERVICES – both its own and those from third-parties – in written form along with the offer. Should the software contain open source software, which components use which type of open source software must be stated along with which license conditions apply to the components.

Article XVI: Export control

From the CONTRACTED SUPPLIER, SITECO shall receive the information required for complying with foreign trade law concerning export, import and re-export, in particular:

1. The commodity code in accordance with the current commodity classification for foreign trade statistics and the HS (Harmonised System) code; in doing this, the CONTRACTED SUPPLIER only has to indicate to SITECO the commodity code valid for the CONTRACTED SUPPLIER's country. Suppliers from the EU must indicate the EU tariff numbers,
2. the country of origin (non-preferential origin) and, if requested by SITECO, supplier declarations of preferential origin from European suppliers or certificates of preference from non-European suppliers.
3. All applicable export list numbers including the Export Control Classification Number (ECCN) in accordance with the US Commerce Control List.

Article XVII: Non-disclosure

1. Tools, moulds, samples, models, profiles, drawings, standard sheets, 3D CAD data, master drawings and gauges furnished or ordered by SITECO as well as items manufactured using them may not be passed on to third parties or used for purposes outside those specified in the agreement without the written consent of SITECO. They must be secured especially against unauthorised inspection or use. Subject to further rights, SITECO may demand their surrender at any time. They are to be returned after fulfilment of the contract without having been requested to do so. The CONTRACTED SUPPLIER waives any rights of retention in this regard.
2. The CONTRACTED SUPPLIER may not make information obtained from SITECO available to third parties, unless the information is generally known or has otherwise become legally known to third parties.

Article XVIII: Assignment of claims, offsetting

Assignment of claims is only permitted with the written consent of SITECO. The CONTRACTED SUPPLIER may only offset against undisputed or legally established claims.

Article XIX: Indemnity – product liability

1. To the extent the CONTRACTED SUPPLIER is responsible for damage to a product or does not comply with legal requirements (e.g. RoHS, ElektroG etc.) or breaches guarantees, the CONTRACTED SUPPLIER is obligated on the first request to indemnify SITECO from damage claims by third parties.
2. Within the scope of the CONTRACTED SUPPLIER's liability for damages, the CONTRACTED SUPPLIER is obliged in particular to reimburse any expenses (in particular within the meaning of sections 683 and 670 of the German Civil Code – BGB) arising from or in connection with a recall action carried out by SITECO. SITECO will inform the CONTRACTED SUPPLIER – to the extent possible and reasonable – about the content and scope of recall measures to be carried out and provide the CONTRACTED SUPPLIER the opportunity to comment. Other claims within this context remain unaffected.

Article XX: Court of jurisdiction, applicable law

1. Court of jurisdiction is Traunstein, provided the CONTRACTED SUPPLIER is a merchant.
2. German law shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Article XXI: Severability clause

In the event that individual provisions of the agreement are legally invalid, the remaining provisions shall still be in force. This shall not apply if adherence to the agreement would constitute an unreasonable hardship for one of the parties.