

**GENERAL TERMS AND CONDITIONS OF
PURCHASE WINTERSTEIGER AG GCP 04
dated 12/21/2016**

I. Scope of application / Exclusion of contradictory terms and conditions of business

- (1) All **orders and purchase transactions of Wintersteiger AG**, A-4910 Ried im Innkreis, Dimmelstraße 9 (hereinafter referred to as Wintersteiger) shall be carried out **exclusively on the basis of these General Terms and Conditions of Purchase** in the current version (hereinafter referred to as **GCP**). These GCP shall also apply to all future transactions of this kind without the need for their validity to be agreed separately in each individual case.
- (2) **Contractual terms contrary** to these GCP, in particular general terms and conditions of business of the Contractor, are in every case to be regarded as having been **waived**.
- (3) Deviations from the GCP shall require the prior written consent of Wintersteiger in each individual case in order to be legally effective.

II. Orders

- (1) Orders by Wintersteiger must be made in **writing** in each individual case so as to be legally effective. Transmission by fax shall be sufficient to satisfy the requirement for the written form. If the **written order deviates** from the inquiry or the non-binding announcement of an order, the written confirmation shall be deemed to be **accepted** by the Contractor unless the Contractor sends notification of its **rejection** in writing **within one week**. If the Contractor sends notification of its rejection, no contract shall be deemed to have been concluded. **Silence on the part of the Contractor** in response to an order from Wintersteiger **shall be regarded as acceptance** of an order after a period of **one week** has passed.
- (2) **Offers from the Contractor** are in any case **binding** for a period of **four weeks** after receipt by Wintersteiger.
- (3) Unless otherwise agreed in writing in the individual case, the order shall also include **all necessary ancillary, auxiliary, and additional deliveries and services**, including assembly and installation, the performance of the test run with the provision of all consumables required for this purpose such as operating and lubricating materials, test materials, further including the necessary training, handover of German-language operating manuals and technical documentation, which shall be covered by the agreed prices.
- (4) The Contractor is obliged to **check** the inquiries, documents, information, and orders transmitted by Wintersteiger for any ambiguities or incompleteness, and to check whether the object of the order is suitable for the intended purpose. The Contractor must **inform** Wintersteiger immediately **in writing of recognizable defects and concerns**. Furthermore, within a reasonable period of time, the Contractor must provide Wintersteiger with hints or suggestions for remedy or improvement, without separate payment.

III. Powers

- (1) The Contractor guarantees to have at its disposal all of the **prerequisites** necessary for the execution of the order, such as in particular, but not exclusively, sufficient technically trained personnel, technical systems, industrial property rights, know-how, etc.
- (2) Moreover, the Contractor guarantees to hold all official and other **permits, authorizations, licenses, and/or approvals**, whether covered by public or private law, necessary for the execution of the order.

IV. Order confirmation

- (1) The Contractor is requested to confirm orders in writing; however, the written confirmation does not constitute a prerequisite for the conclusion of an order binding the Contractor.
- (2) Wintersteiger is not obliged, after receipt of the order confirmation, to point out once again that only these GCP are applicable and that contractual conditions contradicting these GCP are deemed to have been waived.

V. Reservation of rights / rights of use and exploitation

- (1) **All rights of Wintersteiger** to copyright or otherwise protectable works, documents such as drawings, plans, and samples of any kind, know-how, samples, patents, etc. remain **expressly reserved**. Such works, documents, know-how, samples, patents, etc. may **not be made accessible to third parties, passed on to them, nor used for the Contractor's own purposes** without the written consent of Wintersteiger in each individual case. In the event of doubt, such consent shall be deemed not to have been given.
- (2) If tools, models, samples, devices, EDP programs, etc. are produced by the Contractor or on its behalf by third parties for the fulfillment of **Wintersteiger's** orders, the **sole ownership** as well as all **exclusive (work) rights of use and exploitation** to these shall be transferred to Wintersteiger upon payment of the purchase price. All these rights may be **transferred** in whole or in part to third parties without further consent of the Contractor. This includes the right to **change, duplicate, distribute, or otherwise exploit** these tools, models, samples, devices, EDP programs, etc. **without restriction**. The use of these tools, models, samples, devices, etc. by the Contractor for third-party orders is not permitted.

VI. Delivery / default in delivery / dispatch

- (1) The **delivery date** stated on Wintersteiger's order is **binding**, advance or partial deliveries shall require the agreement of Wintersteiger. Excess deliveries which exceed the ordered quantity may be retained at the discretion of Wintersteiger or returned at the cost and risk of the Contractor.

- (2) If the Contractor is in **default of delivery**, Wintersteiger shall be entitled to **withdraw from the contract**, setting a **grace period of 2 working days** – without prejudice to further claims, such as those for fulfillment, compensation for damages, etc.
- (3) **Delivery** is "**DDP according to Incoterms 2010**" to the **destination specified** by Wintersteiger in the **order**. If, in exceptional cases, a different delivery condition is agreed in writing, the transport instructions issued by Wintersteiger must be observed.
- (4) The goods shall be shipped in packaging suitable for protecting the goods from damage caused by stresses, as is usual for the transport selected. Wintersteiger shall not incur any packaging costs.
- (5) A delivery note stating the order number and the Wintersteiger article numbers must be enclosed with each consignment. If a consignment consists of several packages, each must contain the Wintersteiger order data and a packing slip. Without corresponding delivery documents, Wintersteiger shall be entitled to refuse acceptance of the delivery.

VII. Cancellation by Wintersteiger

- (1) **Wintersteiger** shall be entitled to **cancel the order** at any time. If goods have already been produced on the basis of an order according to the individual wishes and specifications of Wintersteiger, the Contractor shall be entitled to reimbursement of the **cost price** documented in detail, in so far as it is impossible to use the goods in any other way. Any further **claims held** by the Contractor, in particular claims for compensation of any kind whatsoever, shall be **excluded**.

VIII. Prices / billing / payment

- (1) **Prices** are "**DDP according to Incoterms 2010**" and are **fixed prices** which are not subject to any increase. In the case of cost estimates made by the Contractor, their accuracy is guaranteed.
- (2) Irrespective of the start of the limitation periods, invoices shall only become due for payment after complete delivery and proper invoicing, even if partial deliveries are accepted. Similarly, the discount period shall not commence until after complete delivery and proper invoicing.
- (3) Irrespective of different written agreements in individual cases, invoices issued to Wintersteiger shall fall due for payment **within 90 days** after complete delivery and proper invoicing; for payment within **14 days, the Contractor shall grant a 3% discount**. In any case, payments shall be deemed to have been made on the date that the amount is debited from Wintersteiger's account. In the event of checks being sent, payment shall be deemed to have been made one working day after the check has been sent by Wintersteiger.

IX. Guarantee

- (1) Information on the properties, condition, or intended use of the ordered goods or services shall be deemed to be **guaranteed** by the Contractor in the sense of an **express warranty**. In addition, the Contractor shall guarantee that the ordered goods and services are **CE-certified**, of **first-class quality** and **fully functional**, and **free from rights or claims of third parties**, in particular those based on industrial or other intellectual property.
- (2) Notwithstanding differing written agreements in individual cases, the **guarantee period** shall be **24 months** from the acceptance of the goods by Wintersteiger. The provisions of **Articles 377 and 378 of the German Commercial Code are expressly excluded**. The Contractor shall therefore not be entitled to raise the objection of non-delivery, late delivery, or improper form. If Wintersteiger issues notification of a defect within the guarantee period, this defect shall be assumed to have existed at the point of handover to Wintersteiger. Wintersteiger shall be entitled to assert guarantee and/or warranty claims from notified defects in court up to **6 months after expiry of the guarantee period**. For claims for compensation asserted by Wintersteiger, the legal periods of limitation apply.

X. Liability / joint liability / retention / refusal to perform

- (1) Under no circumstances shall Wintersteiger or any third parties working on behalf of Wintersteiger be liable for slight negligence.
- (2) If there are multiple Contractors, they shall be jointly liable with regard to Wintersteiger.
- (3) The Contractor has no **rights of retention or rights to refuse performance** in so far as there are no mandatory legal regulations to the contrary. Possible differences of opinion shall not entitle the Contractor to discontinue services due or to withhold deliveries.

XI. Prohibition of offsetting / assignment

- (1) The Contractor shall not be entitled to offset any counterclaims that it may hold against Wintersteiger from any title whatsoever against claims asserted by Wintersteiger.
- (2) The Contractor shall not be entitled to assign claims held against Wintersteiger to third parties or to otherwise dispose of them in favor of third parties. Assignments or other dispositions made contrary to this prohibition are legally invalid.

XII. Written form / nullity

- (1) Amendments or supplements to these GCP must be made in writing in each individual case in order to be legally valid. Transmission by fax shall be sufficient to satisfy the requirement for the **written form**. This also applies to notifications and declarations. All of the above shall also apply to the waiver of the requirement for the written form.

- (2) The invalidity or ineffectiveness of individual provisions of these GCP shall not affect the validity of the remaining provisions. In this case, those agreements shall be deemed to have been made which come closest to the economic purpose of the invalid or ineffective agreement as well as to the intention of the parties.

XIII. Notifications

- (1) Notifications shall be sent in the form provided for in this contract, or alternatively in the form provided for by law, to the address last notified in writing. Transmission by fax shall be sufficient to satisfy the requirement for the written form.
- (2) The Contractor is obliged to inform Wintersteiger immediately in writing of changes of address, otherwise notifications to the last address of the Contractor announced in writing shall be considered to be legally valid. Unless expressly stated otherwise, the date of posting shall be decisive for the timely receipt of a notification.

XIV. Place of performance / place of jurisdiction / applicable law / limitation period

- (1) The **place of performance** for all obligations resulting from the business relationship is agreed to be Wintersteiger's registered office in **A-4910 Ried im Innkreis**.
- (2) For all disputes arising from or in connection with purchase transactions, the exclusive jurisdiction of the court in **Ried im Innkreis** which is competent for the subject matter is agreed. However, Wintersteiger remains entitled to also file suit against the Contractor at its general court of jurisdiction.
- (3) **Substantive Austrian law** shall apply exclusively. The applicability of the **UN Convention on the International Sale of Goods is expressly waived**.