

## **GENERAL PURCHASING CONDITIONS**

### **1. APPLICABILITY**

The present General Purchasing Conditions govern all requests for quotations, orders, purchases and other legal transactions and payments of GIG Karasek vis-à-vis the contractor, including any that may arise in the future. The applicability of any general terms and conditions of the contractor is excluded. Any deviations from these General Purchasing Conditions must be in writing. This applies also in regard to any departure from the written form. No verbal side agreements have been concluded.

In the event of any contradictions in the contractual documents, the following order of priority applies:

- special agreements (e.g. delivery agreement, quality assurance agreement etc.), provided these have been confirmed by GIG Karasek in writing
- the present General Purchasing Conditions
- documents relating to requests for quotation
- the technical part of the contractor's offer
- non-mandatory provisions of commercial and civil law

### **2. OFFERS**

In its offers the contractor must adhere precisely to the requests for quotation from GIG Karasek in regard to quantity and condition, and in the event of deviations, obvious errors, ambiguities, incompleteness and unsuitability must make express reference thereto in writing before the conclusion of the contract. If the contractor fails to make such reference, it has no entitlement whatsoever to any higher remuneration in the event of deviations. Offers must always be submitted on a binding basis and free of charge.

### **3. ORDERS**

Orders are legally binding for GIG Karasek if they have been made out on our order forms and have been duly signed. Verbal and telegraphic orders are only valid if confirmed in writing by GIG Karasek. Communication by email is also regarded as equivalent to the written form within the meaning of this provision. By acceptance of our order, these General Purchasing Conditions become part of the contractual content, and any general terms and conditions referred to by the supplier in the offer or the order confirmation no longer apply in regard to the execution of our order, without GIG Karasek having to make any special objection to such general terms and conditions. Any such obligations of the seller only obligates GIG Karasek if acknowledged by GIG Karasek in writing. Unless GIG Karasek has given its consent, the quantity delivered may not be more than or less than the quantity ordered, and must fully accord with the order as placed by GIG Karasek. If goods and/or services are executed without written instruction, or in any unauthorised deviation from the contract, payment will only be made if the goods and/or services in question are subsequently expressly acknowledged by GIG Karasek in writing. At the request of GIG Karasek, the delivery of such goods and/or the provision of such services must be reversed within a reasonable period, otherwise this procedure can be undertaken by GIG Karasek at the contractor's cost. If the intended use of the product or service (or a more detailed description of the use of the product or service) is stated when the order is placed, this information becomes part of the contract. The contractor accepts liability in regard to the goods or the service being fit and usable for the stated purpose. No changes may be made to materials, production processes or supplied parts without the express consent of GIG Karasek.

### **4. ORDER CONFIRMATION:**

Orders are to be signed by the contractor and returned to GIG Karasek to arrive within 3 working days. If this period expires without the order having been confirmed in this way, the order is deemed to have been accepted by the contractor with legally binding effect. The order is to be confirmed with the price and delivery time stated. If the order confirmation differs from the order (e.g. in regard to price, deadlines or product specification), the changes are to be clearly and visibly stated. Irrespective of this, the order is only validly concluded if GIG Karasek consents to the changes in writing. Under no circumstances is silence on the part of GIG Karasek to be understood as consent. In all cases the delivery of goods / provision of services is deemed to constitute acknowledgement of the order and of the conditions of GIG Karasek without reservation, even if no order confirmation (or a deviating order confirmation) has been received.

### **5. PRICES:**

The prices agreed in the order are fixed prices exclusive of VAT. The prices include all goods to be delivered and services to be provided as well as documentation and financing costs. In particular, the prices include the costs of packing, customs costs, insurance and other transport costs and shipping costs including the costs of a transport permit. Price increases (including any increase in the additional delivery costs) which arise for any reason whatsoever require the prior written consent of GIG Karasek. If prices and conditions are not already specified by GIG Karasek in the order, and are only specified at a later stage, these only become valid when they are accepted in writing by GIG Karasek. With regard to extensions and additions to orders, the same conditions and price reductions apply as for the main order.

### **6. DELIVERY DATES AND DELIVERY PERIODS:**

The agreed delivery dates and periods are binding. The date of delivery is deemed to be the day on which the item ordered and the shipping documents and other documentation arrive at the specified reception point. Part deliveries and premature deliveries require the express consent of GIG Karasek in writing. In the event of premature delivery, the payment periods do not start until the originally agreed delivery date. Acceptance of goods delivered late is always subject to reservation of all possible claims. Any deadline postponements by GIG Karasek are free of charge. GIG Karasek is also entitled to suspend the respective contractual relationship at any time at its own discretion and without stating reasons. The contractor will take the necessary measures to ensure that work can be resumed as quickly as possible once resumption has been approved by GIG Karasek. In such a case the contractor will immediately point out the consequences to GIG Karasek, as well as the actual direct costs arising. The contractor must provide evidence of any direct costs arising from the suspension. Any claims of the contractor over and above this, whatever the legal basis thereof, are excluded. The contractor can only plead the failure of GIG Karasek to deliver necessary documents or information if the contractor has issued a written reminder concerning the sending of the documents or information and has not received these. If the deadlines as stated in the order change for reasons which are not attributable to the contractor, the contractor states that it agrees to undertake proper storage of the items in question for GIG Karasek for up to 3 months, at the contractor's cost and risk.

### **7. CONTRACTUAL PENALTY:**

The obligation to pay a contractual penalty arises for the contractor as soon as any delay occurs, without GIG Karasek having to provide proof of loss, and is independent of culpability. If the contractor exceeds the delivery periods or delivery dates as agreed in the order,

it must pay GIG Karasek a contractual penalty of 1% of the total order value for each week of delay or part thereof (not exceeding 10% of the total order value). In addition to the contractual penalty, GIG Karasek is also entitled to withdraw from the contract. Contractual penalties in the event of non-achievement of assured characteristics or services or service data can be defined in the technical specifications or enclosures. Other compensation claims of GIG Karasek against the contractor over and above the contractual penalty are not affected. The safeguarding of the claim to the contractual penalties does not require GIG Karasek to express reservations at the time of acceptance of a delivery or service. The contractual penalties will be deducted from the ongoing invoices or from the contractor's claim.

#### **8. DELIVERY AND ACCEPTANCE:**

Unless otherwise agreed, delivery is effected DDP INCOTERMS 2020 to GIG Karasek or to the place named by GIG Karasek. In the event of delivery DDP, or if GIG Karasek is paying the transport costs, GIG Karasek has the right at any time to change to delivery FCA INCOTERMS 2020, in which case the transport costs are to be deducted from the price accordingly. Ownership of the scope of delivery/service is transferred to GIG Karasek upon handover. A delivery note is to be enclosed with each delivery. The contractor is liable for all damages, costs, demurrage etc. arising as a result of the non-observance of this provision. Without proper shipping documents the delivery will not be accepted, and will be set aside at the contractor's cost and risk. The delivery must be packaged by the contractor in a manner appropriate to the goods and the means of transport. Part deliveries are only permitted on the basis of express written consent by GIG Karasek. In any event part deliveries are not to be regarded as separate transactions, and are to be marked in writing with the total quantity and the part-delivery quantity stated. Deliveries are accepted subject to examination for freedom from defects, insofar as and as soon as this is feasible in the normal course of business. Such examination only covers the identity and completeness of the goods and any externally recognisable defects. In addition the contractor will carry out a quality assurance examination of the outgoing goods; to that extent the contractor waives the objection of late notice of defects. The applicability of §§ 377 and 378 of the Austrian Commercial Code [UGB] is hereby expressly waived. Notice of defects is deemed to have been given in a timely manner up to 6 weeks following handover in the case of obvious defects, and up to 6 weeks following discovery in the case of hidden defects. In the case of goods which are normally left in their packaged state up to the time of use, defects which only become visible when the goods are removed from the packaging are regarded as hidden defects. Payments made by GIG Karasek do not constitute acknowledgement that the items in question are free from defects.

#### **9. QUALITY ASSURANCE:**

In the context of the delivery of goods and the provision of services, the contractor requires itself and its suppliers to apply the principles of quality management systems and environment management systems as set out in the relevant standards ISO 9001 and ISO 14001. GIG Karasek has the right to verify the quality management systems and environment management systems of the contractor and its subcontractors, on dates to be agreed, to ensure that they are in conformity with these standards (audits). The observance by the contractor of all statutory and safety-related regulations and requirements in regard to restricted, noxious or hazardous substances is absolutely necessary.

#### **10. COMPLETENESS:**

The contractor's obligation in regard to the delivery of goods / provision of services, including documentation, covers all parts and

services which are normal for the sector or which belong to the delivery as ordered on the basis of the factual connection, even if these are not expressly stated. In particular, the term "completeness" is to be understood to mean that the functioning capability of the components ordered for the required intended purpose is guaranteed, under the operating conditions, influences, safety provisions, applicable standards and official regulations etc. to be expected at the place of use.

#### **11. DOCUMENTATION:**

The required documentation forms the basis of the order. In the event of delay in sending the documentation, release for payment applies only after the documentation has been received. Documentation within the meaning of the order is all written, graphic and digitally produced documents (incl. source code and production drawings) that are specified in order to ensure all activities connected with the orderly and timely delivery of goods and provision of services. The documentation must be presented in electronic form in the scope as described in the order and its enclosures. If changes arise in the order, these are to be incorporated immediately by the contractor in all technical documents and other documentation, so that fully corrected final documentation is guaranteed. If CE marking is necessary for the goods and services, this must demonstrably and verifiably comply with all relevant statutory provisions and all standards in the most recently valid version. In the case of cross-border transactions, the contractor must attach any valid proof of preferential origin (certificate of origin etc.) to the goods to be delivered, free of charge.

#### **12. INVOICE:**

Unless otherwise agreed, all invoices are to be sent in 1 copy to GIG Karasek. Invoices must comply with the statutory requirements, in particular the requirements of commercial law and tax law. Invoices must in all cases contain the complete order number and the order/contract date. The contractor is liable for any additional or consequential costs due to presentation of incorrect or incomplete invoices. Invoices concerning work performed and assembly work must have the time records confirmed by GIG Karasek attached. Invoices which have not been made out in accordance with these conditions, in particular in regard to the order references, will be deemed not to have been presented. By presentation of the final invoice the contractor states that it has thereby asserted all claims arising from the transaction in question, and that no further claims will be made.

#### **13. PAYMENT:**

In the absence of any special agreement, payment is made within 14 days less 3 % discount, or within 45 days net, after all preconditions for payment as set out in the order have been fulfilled, including in particular the proper provision of documentation. The payment period for the invoice starts on the day on which the goods have been properly received with full documentation or the service has been provided and the invoice has been received. In the event that an invoice has not been properly made out, or in the event of objections to the delivered goods, the payment period starts again as of the date on which the defects are rectified. If part deliveries are agreed, the payment period does not start until the entire order has been completed. If payment is made in part amounts on the basis of an agreement, GIG Karasek does not forfeit its entitlement to discount, even if other part payments are made outside the discount period or the payment period. Payment can be withheld until all notices of defects have been dealt with. Any payment made does not signify acknowledgement of proper delivery of goods / proper provision of services by the contractor, neither does it constitute waiver of any claims of any kind whatsoever. The contractor is not permitted to assign to third parties any claims that

have been asserted against GIG Karasek, unless GIG Karasek gives its written consent to the assignment.

If the contractor does not provide performance as contractually agreed, GIG Karasek is entitled to offset due payments against counterclaims arising from all business transactions of the contractor with GIG Karasek or with other companies of the Dr. Aichhorn Group.

#### **14. SUBCONTRACTING:**

The contractor must inform GIG Karasek in a timely manner concerning any intended subcontracting, and must have such subcontracting approved in writing. The contractor is fully liable for its subcontractors.

#### **15. CONTRACTUAL DOCUMENTS:**

All information, drawings and other technical documents which are handed over to the contractor by GIG Karasek for the production of the item to be delivered, or which the contractor has prepared in accordance with special information provided by GIG Karasek, may not be used, copied or made accessible to third parties by the contractor for purposes other than for the production of items on the basis of the relevant order. The documents referred to remain in the sole ownership of GIG Karasek, and upon request are to be immediately surrendered to GIG Karasek together with all copies and reproductions. The processing of materials and the assembly of parts is undertaken for GIG Karasek. In the ratio of the value of the materials provided to the value of the total product, GIG Karasek becomes co-owner of the products made using materials and parts, which to that extent are held in safekeeping by the contractor for GIG Karasek. If delivery is not effected for any reason whatsoever, the contractor must immediately return all documents without being requested to do so, or archive them under a guarantee that no further inappropriate use will be made of them. The orders and the works carried out on the basis of the orders are to be regarded as business secrets and are therefore to be treated confidentially. The contractor is liable for all damages arising for GIG Karasek from the violation of any of these obligations. The contractor is only permitted to cite or refer to the existing business relationship in advertising materials and publications of any kind if GIG Karasek has given its express written approval.

#### **16. WARRANTY:**

Unless otherwise specified in these General Purchasing Conditions, the statutory provisions in regard to physical defects and defects of title apply. The supplier guarantees that the goods and services have the contractually assured characteristics, and that they are suitable for the envisaged use, and also that the design and production technology are in accordance with the latest technical standards, and that new material of first-class and suitable quality is used, and that the item ordered is free from defects and is of normal commercial quality and is not subject to defects which nullify or change its value or its fitness for its normal use or the contractually stipulated use. The contractor guarantees that all agreed performance values are achieved and reliably observed. In addition the contractor guarantees that the sale of the delivery item does not infringe any rights of others, and that no statutory ordinances constitute an obstacle to the sale. If any defects arise, GIG Karasek is entitled, at its choice, and irrespective of its claim to a contractual penalty, either to demand a replacement delivery, a price reduction, removal of the defect, or compensation for non-performance, or (after setting an appropriate grace period) to withdraw from the contract. If a written warning (also as email) with statement of the reasons for contractual observance has also been issued on a repeated basis, this is also deemed to constitute the setting of a grace period. In urgent cases, in particular for the avoidance of greater damage or the averting of acute danger, GIG Karasek is entitled,

without setting a grace period, to have a defective delivery item or service repaired at the contractor's cost or to procure a replacement from a third party. In addition the contractor must pay all costs arising in connection with the repair of the defect, particularly transport costs, dismantling and assembly costs, administration costs, handling costs and other costs arising in connection with the repair of the defect. Further statutory claims and other contractual compensation claims from GIG Karasek against the contractor in addition to the warranty are not affected. In the case of defects which only emerge when the delivered goods are being processed or brought into use, notice of defects can still be given by GIG Karasek immediately following discovery thereof according to point 8 herein. If a formal acceptance procedure is agreed, a 24-month warranty period starts upon the signing of the acceptance report by the contractor and GIG Karasek. If no formal acceptance procedure is agreed, a 36 month warranty period starts upon handover to the end customer of the product in which the contractor's delivery item is installed. With regard to subsequently improved or replaced delivery items, the warranty period starts anew after the subsequent improvement. With regard to delivery items which cannot continue to be used during the investigation and/or the repair of the defect, the ongoing warranty period is extended by the period of suspension of operation. Throughout the warranty period the burden of proof that any defect was not present at the time of handover rests with the contractor.

#### **17. INDUSTRIAL PROPERTY RIGHTS:**

The contractor guarantees that its scope of delivery and service and the documentation and drawing supplied by it do not infringe any property rights (patent rights, trademark rights, design rights, copyright, equipment, product designations, know-how, territorial protection and rights of a similar kind, even if the rights in question have only been applied for). The contractor is liable for all consequences resulting from any violation of these provisions, and will fully indemnify GIG Karasek in regard to claims of third parties. Irrespective of any further rights, GIG Karasek is entitled in such a case to refuse formal acceptance until the justification for the claims asserted has been clarified, and to place any already accepted goods at the disposal of the contractor at the contractor's cost, and to withhold payment of the entire purchase price.

#### **18. LIABILITY AND INSURANCE:**

In the event of any culpability, the contractor is liable towards GIG Karasek in accordance with the statutory provisions for all claims, in particular also for consequential damage, purely financial losses and lost profit. In the event of recourse claims the contractor also undertakes to indemnify GIG Karasek in regard to procedural costs or costs of extrajudicial settlement as well as interest. Unless agreement is reached to the contrary, in the context of the orders GIG Karasek can claim a liability reserve of 10% of the total amount as an amount retained for possible compensation claims, claims for rectification of defects, and other costs. This liability reserve is not associated with any limitation of the contractor's liability. The liability reserve can be replaced by a cost-free, irrevocable abstract bank guarantee from a first-class bank in the same counter-value with a term of 45 days beyond the warranty period. The contractor undertakes to maintain the insurance policies necessary for the transaction (public liability insurance, transport, assembly etc.) with a sufficient sum of cover. Before the conclusion of the contract, the contractor will on its own initiative provide GIG Karasek with confirmation that the relevant insurance has been taken out.

#### **19. AUSTRIAN PRODUCT SAFETY ACT:**

In accordance with the Austrian Product Safety Act [Produktsicherheitsgesetz], the contractor must communicate to

GIG Karasek all information which is significant for an assessment of the risk to the safety and health of users of the delivery item or third parties. The following points in particular are to be taken into consideration:

- the characteristics of the delivery item including its composition, packaging, the instructions for its assembly, its installation, maintenance and duration of use,
- its effects on other products, insofar as it is expected to be used with other products,
- its appearance, commercial presentation, labelling, warnings, instructions for use and operation and information for its removal and all other product-related information,
- the group of users who are exposed to a greater danger than other persons when using the delivery item.

#### **20. REACH:**

The SUPPLIER must provide GIG Karasek with all necessary information for registration in accordance with Regulation (EC) 1907/2006 for the Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH”), and all confirmations of registration insofar as these have already been obtained.

#### **21. FORCE MAJEURE:**

The contracting partners are wholly or partially released from the timely fulfilment of the contract if they are hindered by events of force majeure. Only the following are regarded as events of force majeure: war, insurgency, forces of nature, fire, union-approved strike. However, if the contractor is hindered by an event of force majeure it can only plead a situation of force majeure if it has informed GIG Karasek in writing immediately (and not later than within 5 calendar days) concerning the start and foreseeable end of the hindrance, the cause, the expected effect and the duration of the delay. If a situation of force majeure lasts for more than four weeks, the contractor and GIG Karasek will commence negotiations to seek a resolution of the effects that are preventing the execution of the contract. If a situation lasts for more than 6 months and no amicable solution can be achieved, each contracting partner has the right to withdraw from all or part of the contract.

#### **22. ADDITIONAL CHARGES:**

If, in the course of contractual performance, services are likely to be required which lie outside of the contractor’s agreed service and delivery scope, GIG Karasek is to be expressly informed in writing by the contractor beforehand concerning any additional charges. Any changes and/or events influencing the scope of goods and services are to be presented to GIG Karasek in a timely manner for decision, together with a reference to the cause, the effects, and the necessary measures. This means that changes which may be relevant in terms of the costs, the contract and/or the deadlines always require the written consent of GIG Karasek, and will only be acknowledged if such consent has been obtained.

#### **23. CANCELLATION:**

GIG Karasek has the right to withdraw from all or part of the contract at any time, even in the absence of any culpability on the part of the contractor. In such a case GIG Karasek must pay the contractor the contractual price on a proportional basis for goods already delivered / services already provided, and in addition must reimburse the proven direct costs of deliveries/services already in progress and the cancellation of any subcontracts. Following declaration of cancellation the contractor will make all possible and reasonable efforts to keep the direct costs to be reimbursed by GIG Karasek as low as possible.

#### **24. PROVISION OF MATERIALS:**

Materials provided remain the property of GIG Karasek, and are to be designated as such, and stored and managed separately. In the event of the reduction in value, destruction or loss of such materials, replacements are to be provided by the supplier. Materials provided may only be used for GIG Karasek orders. In the context of the processing of such materials GIG Karasek becomes the direct owners of the new or reworked item. Billing in regard to the materials provided is to be undertaken in the form as notified by GIG Karasek.

#### **25. CONFIDENTIALITY:**

The contractor has access to certain information of GIG Karasek and its customers which is confidential and needs to be kept secret. The contractor therefore hereby states that it agrees to handle such information confidentially and to use it or pass it on to third parties exclusively for services in the context of the business relationship with GIG Karasek and not for any other reason. All existing confidentiality agreements between GIG Karasek and the contractor continue to apply in their full extent. The contractor agrees to reimburse GIG Karasek for all damages and costs arising from the violation of its duties of confidentiality.

#### **26. NON-SOLICITATION:**

The contractor is prohibited from directly or indirectly soliciting employees of GIG Karasek or directly or indirectly offering them employment without the prior written approval of GIG Karasek. If the contractor acts in contravention of this point, it must pay a contractual penalty corresponding to the gross annual salary (calculated as for the severance pursuant to § 23 of the Austrian Salaried Employees Act [AngG]) which GIG Karasek has paid the solicited employee in the last year of employment, or (if the contractual duration is shorter) the extrapolated gross annual salary.

#### **27. SPARE PARTS:**

The contractor guarantees the supply of spare parts for a period of at least 15 years following the first properly executed delivery.

#### **28. PLACE OF PERFORMANCE:**

The place of performance for all obligations arising from this contract is the place as designated by GIG Karasek in the order for the delivery of goods or the provision of services by the contractor. The place of payment is the premises of GIG Karasek.

#### **29. EXPORT LICENCES:**

The contractor is responsible for ensuring that the contractual products, if they are processed/used as intended, are suitable for export to the destination countries as agreed or as known. If obstacles to delivery do nevertheless arise on the basis of decisions by the authorities and/or national or international regulations, in particular because of export control provisions, or embargos or other sanctions imposed on the basis of the contractor’s contractual products, the contractor must provide GIG Karasek with appropriate and prompt support in the procurement of the necessary export approval. If the obstacle to delivery lasts for longer than 3 months, GIG Karasek has a special right of withdrawal in regard to the affected parts.

#### **30. CE MARKING:**

For ready-for-use delivery items which have been ordered and which are subject to the CE marking requirement, the documentation regarding hazard analysis, the declaration of conformity and the instructions for operation must also be delivered, not later than the date on which the item is delivered. Where partly completed machinery has been ordered, the requirements set out in the annex to Directive 2006/42/EC of the

European Parliament and of the Council of 17 May 2006 on machinery (as amended) are to be fulfilled to the extent that the sample declaration of incorporation, the assembly and operating instructions, and all necessary technical documents are also to be delivered. The contractor is liable for all direct and indirect damage arising for GIG Karasek on the basis of defective CE conformity. In addition the conformity of the delivery item (if it is an item of machinery) with Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery (as amended) not only represents a legal requirement for the contractor, but is also one of the fundamental requirements for the machine, and therefore defines the “normal condition” of the machine. The contractor states that it is willing, at the request of GIG Karasek, to send the risk assessment to GIG Karasek.

### **31. CHOICE OF LAW, PLACE OF JURISDICTION:**

With regard to disputes arising from this legal relationship with a contractor with its registered office inside the European Union, the contracting parties are subject to the jurisdiction of the court which has local and subject-matter competence for GIG Karasek. However, GIG Karasek is entitled at its own choice also to bring legal action against the contractor at any other court that may have jurisdiction for the contractor under national or international law. Disputes between GIG KARASEK and a contractor with its registered office outside the European Union shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of arbitration shall be Vienna. The language to be used shall be English. The law of the Republic of Austria applies exclusively, to the exclusion of the provisions of international private law. Laws concerning the international purchase of moveable items, in particular the United Nations Convention on the International Sale of Goods of 11.4.1980 (CISG), do not apply.

### **32. PARTIAL INVALIDITY**

If individual provisions of these General Purchasing Conditions are wholly or partially invalid, all other provisions continue to be valid. If such a case arises, the contracting parties undertake to replace the invalid or unenforceable provision with a valid or enforceable provision which approximates most closely to the economically desired purpose of the wholly or partially invalid or unenforceable regulation in the context of the contract as a whole. In the event that an omission subsequently becomes apparent, the provision that corresponds to what would have been agreed, according to the meaning and purpose of the present regulations, if the solution of the contractually unregulated question had been considered beforehand is deemed to be agreed.