

OBRIST GROUP

General Terms and Conditions of Purchase

Rheinstrasse 26-27

6890 Lustenau

Status: April 2018

OBRIST GROUP Obrist Engineering GmbH / Obrist Powertrain GmbH / Obrist Technologies GmbH
OET GmbH / Obrist Immobilien GmbH

1. SCOPE OF APPLICATION, ACCEPTANCE, OTHER TERMS AND CONDITIONS

1.1 These General Terms and Conditions of Purchase apply to any and all purchase transactions between all of the above mentioned companies of Obrist Group (hereinafter shortly referred to as "Obrist") and the contract partner - the latter hereinafter referred to as "Supplier".

1.2 The Supplier shall be deemed to have accepted these Terms and Conditions of Purchase when the Supplier confirms and/or performs any order placed by Obrist.

1.3 Any terms of the Supplier which are inconsistent with or deviate from these Terms and Conditions of Purchase will not become part of the contract even if Obrist fails to explicitly reject their inclusion. If the Supplier does not agree with this regulation, they shall immediately inform Obrist in writing about this fact. Any reference to the Supplier's general terms and conditions contained in any form is hereby explicitly contradicted.

2. OFFERS; PURCHASE ORDERS

2.1 Obrist will not provide any consideration for the preparation of offers, plans, cost estimates, etc. by the Customer, unless such was explicitly agreed.

2.2 Purchase orders of Obrist shall only be valid if Obrist has placed and confirmed them in writing.

2.3 The disclosure of purchase orders, in full or in part, to third parties requires the prior written consent of Obrist. Any violation of this provision shall entitle Obrist to a revocation of this purchase order without replacement; any further claims of Obrist shall remain unaffected.

2.4 The assignment of claims and/or the transfer of the collection of claims against Obrist to third parties shall be excluded and shall entitle Obrist to revoke the purchase order without replacement; any further claims of Obrist shall remain unaffected thereby.

3. TERMS AND CONDITIONS OF DELIVERY AND SERVICE; TRANSFER OF RISK

3.1 The goods or services shall be delivered in accordance with separately listed specifications.

3.2 Unless otherwise agreed in writing, the delivery address and place of fulfilment shall be Obrist GmbH Rheinstrasse 26-27, A-6890 Lustenau.

3.3 The dates of delivery or service specified by the Supplier - hereinafter shortly referred to as "Deadlines" - shall be binding and shall be deemed to be the time of receipt of the goods

or rendering of the services at the agreed place of destination, otherwise at the registered office of Obrist.

3.4 The above shall apply, mutatis mutandis, to deadlines specified by Obrist against which no objection was raised by the Supplier.

3.5 If the compliance with the deadline is endangered, the Supplier shall immediately inform Obrist thereof in writing (email suffices).

3.6 In case of the delay in delivery or service attributable to the Supplier, Obrist reserves the right to claim a contractual penalty in the amount of 1 % per started week of the delay, however a maximum of 5 % of the entire order value. Obrist may also request the liquidated damages if they do not explicitly reserve the right to claim them upon receipt of the delivery or service. Any further claims of Obrist, in particular those for damages, shall remain unaffected.

3.7 Obrist's legal and contractual claims under any default shall also remain reserved in case Obrist accepts a postponement of the Deadline.

3.8 The Supplier shall be obliged to use the fastest means of transport available in case of any excess of the delivery deadline attributable to them, regardless of the type of transport prescribed in the purchase order, in order to mitigate the delay. The costs for this transport shall be borne by the Supplier.

3.9 In case of a delay in delivery or service attributable to the Supplier, Obrist shall be entitled to withdraw from the contract with immediate effect after the expiry of a reasonable period of 14 calendar days.

3.10 If a fixed date was agreed, the contract shall be deemed to be terminated when this date is exceeded, unless Obrist requests the fulfilment of the contract within 14 days.

3.11 Partial deliveries and services made in advance shall be prohibited, unless Obrist gives its written consent, this applies to the exclusion of deliveries and services made within a max. period of 7 calendar days prior to the agreed Deadline. In case of such a previous delivery, the payment terms shall commence only on the contractually agreed Deadline.

3.12 Deliveries shall be made DDP (Incoterms 2010) to the agreed place of destination, unless otherwise agreed. The packaging shall be selected in a manner that a defect-free delivery can be ensured, by observing the applicable packaging standards.

3.13 The period for incoming goods inspections by Obrist shall be 14 calendar days. The Supplier waives, insofar, the objection of delayed notice of defects. That shall not apply to obvious defects;

they shall be reported without delay. Payment shall not be considered as an acceptance of the goods without reservations.

3.14 In case of a specifically agreed release of the delivery by Obrist, Obrist shall be entitled to prolong the delivery period by up to 90 calendar days. The Supplier shall, in this case, be obliged to carefully store the goods, free of charge, until it is released by Obrist.

3.15 If deliverables are delivered across borders, the Supplier shall perform the customs clearance and Obrist shall receive a copy of all export, customs and shipping documents together with the invoice for the delivery.

3.16 The risk of an accidental destruction and the accidental impairment of the deliverable shall only be transferred to Obrist after a positively performed incoming goods inspection by Obrist.

4. QUALITY AND DOCUMENTATION

4.1 The goods to be delivered must comply with the applicable domestic and foreign provisions, the accident prevention provisions, the application regulations and guidelines of the VDE [German Electrotechnology Association] regulations, the generally accepted latest rules and standards of technology, and they must strictly be in conformity with the documents underlying the purchase order and known to the Supplier, such as drawings, descriptions, samples, specifications, acceptance conditions, etc.

4.2 The Supplier shall perform a quality control which is suitable according to type and scope, and complies with the latest state of the art.

4.3 Complete maintenance, operating and service instructions shall be provided in electronic form for equipment, instruments, plant parts or plants, without a separate request and without any extra costs.

4.4 The Supplier shall perform in accordance with a suitable quality management system by observing the current ISO 9001, insofar as that is reasonable to them, and must develop a zero-error philosophy in the best possible manner.

4.5 The Supplier is hereby informed that Obrist is certified according to ISO 9001.

5. PRICES, PAYMENT CONDITIONS AND DELIVERY QUANTITIES

5.1 Prices

a) The price agreed in the order or the purchase order shall be binding.

b) Insofar as Obrist is obliged, on the basis of legal provisions or based on instructions by authorities, to directly pay taxes for the Supplier, Obrist will deduct the relevant tax amount from the invoice amount, pay it directly to the competent financial authorities and prepare a tax receipt for the Supplier. Insofar as the Supplier has neither a registered office nor a tax-relevant permanent establishment in the country of the place of fulfilment, they will confirm that fact in writing to Obrist, at the latter's request.

c) Unless otherwise provided for in writing, the price includes all ancillary services of the Supplier or of the group of suppliers as well as all ancillary costs (e.g. transport costs, including any transport- and liability insurance, if any). The "group of suppliers" comprises

the Supplier, their sub-suppliers and their employees and representatives.

5.2 Payment Terms

a) Unless otherwise agreed, the invoice shall be paid within 30 calendar days from the time of receipt of the complete delivery (including acceptance, if any) by Obrist or a third party appointed by Obrist. The place of business of Obrist shall be deemed to be the place of fulfilment.

b) Insofar as Obrist makes payments prior to their maturity (see item a), the Supplier will grant a discount to Obrist, aliquot to 3 % of the total value. The discount may also be deducted if Obrist sets off or withholds payment to an adequate amount based on defects in a justified manner.

c) In case of a defective delivery or a delivery not in conformity with the contract, Obrist may withhold the payment until the complete fulfilment of the contract by the Supplier. Any advance payments already made shall, in this case, be offsettable with other claims of the Supplier. For any damage of all types which arises from a delivery not in conformity with the contract, the Supplier shall owe to Obrist not only the reimbursement of the costs but also the replacement of lost profits.

d) Payments made by Obrist do not constitute an acknowledgement of the deliveries as being in conformity with the contract.

e) The Supplier shall only be entitled to a right of set-off or retention against counter-claims which have been found to be legally effective or are undisputed. As a supplement to their legal rights of set-off, Obrist shall also be entitled to set off against claims which Obrist has against the Supplier or their affiliated companies.

5.3 Delivery quantities

Obrist shall not be obliged to accept or order any quantities of the deliverables which go beyond the quantities explicitly and bindingly ordered in the purchase order or otherwise. Obrist shall not be liable for any costs caused by an early delivery, non-acceptance of the delivery in case of excess delivery or any waiting periods arising therefrom. In case of short deliveries, the Supplier shall be liable for the costs arising therefrom and for the lost profits.

6. WARRANTY; PROPERTY RIGHTS OF THIRD PARTIES

6.1 During the term of the legal warranty, the Supplier shall eliminate defects immediately at request and at their own expense.

6.2 All costs associated with the elimination of defects, such as e.g. transport as well as costs of de-installation and installation shall be borne by the Supplier. The limitation period for warranty claims will be suspended for the period of the elimination of the defect until the successful elimination of the damage. Any parts exchanged or repaired during the elimination of defects shall be subject to a warranty of 24 months from the completion of the exchange or repair.

6.3 The place of fulfilment for the performance of the elimination of the defect shall be prescribed by Obrist, insofar as that is reasonable to the Supplier.

6.4 In those cases in which the Supplier fails to comply with their warranty obligation within a reasonable grace period granted by

Obrist and even in other specifically urgent cases, Obrist shall be entitled to eliminate the damage or to have it eliminated by third parties or, if that proves impossible, to obtain other replacement, at the Supplier's expense. The above shall apply, mutatis mutandis, in those cases in which Obrist may waive the granting of a grace period for justified reasons by weighing the interests of both parties or in

which such is unreasonable for Obrist. Any other legal provisions shall remain in full force and effect.

6.5 The Supplier's deliveries and services must be free of property rights of third parties. The Supplier shall, in particular, be liable that no property rights of third parties will be violated during the use of the deliveries. The Supplier shall indemnify and hold Obrist harmless against any claims of third parties due to violations of property rights caused by them.

6.6 Insofar as Obrist should be liable for such damage as manufacturer of the end product which are caused by defects in the goods delivered or services rendered by the Supplier, the Supplier shall indemnify and hold Obrist harmless against such a liability caused by the Supplier and shall provide full compensation. The same shall apply in case of any re-call action to be performed, insofar as such is requested by law or the authorities.

7. MEANS OF PRODUCTION AND PRE-MATERIALS

7.1 Means of production which Obrist provides to the Supplier shall be treated with care. Means of production which the Supplier produces or procures and the costs of production (tool costs) of which were paid by Obrist will be transferred to the ownership of Obrist from the time of payment. Upon payment of at least 50 % of the costs of manufacturing (tool costs), Obrist shall be entitled to a transfer of the pro-rated co-ownership. All means of production shall be kept in a condition ready to be used and available for Obrist for a period of 10 years from the last date of production and must be identified with an undeletable label stating "Property (co-ownership) of Obrist Group". If such a storage is impossible or unreasonable for the Supplier, they shall immediately notify Obrist thereof in writing, so that deviating measures can be agreed upon. The means of production shall be provided to Obrist during the storage period mentioned above upon request and without a right of retention. Upon hand-over of the affected means of production to Obrist, the Supplier's storage obligation shall end.

7.2 In case of damage, loss or destruction of pre-materials (semi-finished products, castings, pre-processed parts, etc.) provided by Obrist, the Supplier shall reimburse to Obrist their replacement costs.

8. TERMINATION

In case of a default of delivery or service, Obrist shall be entitled to a right of withdrawal in accordance with Art. 3.9 of these General Terms and Conditions of Purchase. The following additional regulations on termination shall apply to services which go beyond a single transaction:

8.1 Extraordinary termination

Obrist may terminate the complete contract, at any time, in full or in part, and without complying with a notice period, if Obrist cannot reasonably be expected to continue the contractual relationship by taking into account all circumstances which apply to the individual

case and by weighing the mutual interests. Obrist shall be entitled to such a right of termination, in particular, if the Supplier violates one or several essential obligations under the present General Terms and Conditions of Purchase and fails to remedy the violation (if such can be remedied) within a reasonable period after receipt of a relevant complaint from Obrist.

8.2 Termination due to insolvency

A reason for a termination shall also be deemed to exist if the Supplier ceases their business operation or their payments, files for insolvency proceedings or comparable legal proceedings or if such proceedings are opened or if the opening of such proceedings is rejected due to lack of assets.

8.3 Duties in case of a termination

Unless otherwise agreed in each individual case, the Supplier will, after the termination

- a) immediately cease all work under the contract;
- b) not conclude any further sub-orders and no contracts on the purchase of (raw) materials, services or operating materials, unless that is necessary in view of the deliverables which are not covered by the termination; and
- c) take all other reasonable measures which might contribute to a reduction of the consequential costs of the termination.

9. INSURANCE

9.1 The Supplier shall be obliged to maintain all contractually agreed and/or legally prescribed insurances, at their own expense. This obligation shall apply to the expiry of the calendar year following the occurrence of the limitation of warranty claims for the deliverables which were last delivered under this contract.

The following insurances must exist, in particular:

- a) a vehicle liability insurance for all vehicles used for rendering the services under the contract (i.e. including trucks) with a sum insured of no less than EUR 2 million per event of damage and EUR 5 million per year;
- b) an employer's liability insurance and a worker's compensation insurance with a sum insured of no less than EUR 2.5 million each per event of damage and EUR 5 million per year;
- c) a property insurance for the reimbursement of all material assets which are owned by the Supplier, that are rented or leased by them or that are otherwise used in connection with the performance of the contract by the Supplier and for all material assets of Obrist which are in the custody of the Supplier;
- d) a product liability insurance with a sum insured of no less than EUR 2.5 million per event of damage and EUR 5 million per year; and
- e) an environmental liability insurance with a sum insured of no less than EUR 5 million per event of damage and EUR 10 million per year.

9.2 All insurances must provide that

a) the relevant cover exists without any additional conditions and also in the case of a mutual liability;

b) Obrist and their affiliated companies as well as any companies acting jointly with Obrist and their executive bodies, managing directors, other representatives and employees or staff members ("GE Parties") are identified as additional beneficiaries or payment beneficiaries in case of loss; and

c) a waiver of recourse on the part of the insurance in favour of the GE Parties for all damage which is covered by the relevant insurances.

10. RIGHTS TO DOCUMENTS; CONFIDENTIALITY

10.1 All drawings, calculations and the like provided to the Supplier for placing offers or for the performance of purchase orders shall remain the property of Obrist and shall be returned to Obrist upon submission of the offer or the performance of the purchase order. They may not be reproduced nor be disclosed to any third parties without the prior written consent of Obrist.

10.2 The Supplier shall treat as business secrets and keep in strict confidence the business relationship with Obrist, purchase orders, deliveries and/or services resulting therefrom as well as any and all technical and commercial documents and facilities associated therewith. They shall protect these business secrets against any access by unauthorised parties and must not disclose them to third parties and/or utilise them in any other way, unless Obrist has given its explicit prior consent in writing. If Obrist has allowed the placement of sub-orders, the Supplier shall commit their sub-suppliers accordingly. The Supplier shall be liable for any misconduct of their sub-suppliers like for their own.

11. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

11.1 In case of development orders, Obrist shall solely be entitled to the right to the intellectual property ("IP") arising from the order (this means, in particular, any and all knowledge, performances, parameters, know-how, inventions, developed processes, objects, programs as well as other results and materials protected by copyright, including all records, descriptions, experimental arrangements, models and construction samples [prototypes] prepared in this connection, in all development and manufacturing phases, regardless of whether they are eligible for protection).

11.2 If the Supplier develops a patentable idea in the course of a development order, the Supplier shall notify Obrist, in writing, about this fact. Obrist shall – while maintaining the designation of the inventor – be entitled to file a patent regarding the patentable idea alone and to possess and use this patent registration and/or this patent alone. A possible inventor's bonus has to be borne by the Supplier.

12. EXPORT RESTRICTIONS; DECLARATION OF THE SUPPLIER

12.1 The Supplier shall be obliged to inform Obrist, without a request and as soon as possible, about any goods-related restrictions for (re-)exports of the goods delivered by them or to be delivered by them in accordance with the European and/or US export and/or customs provisions and the export and/or customs provisions of the country of origin of the goods. For this purpose,

they will provide at least the following information in their offers and order confirmations on individual goods positions:

a) the number of the Common Military List of the EU and of the dual use goods list,

b) for US goods the ECCN (Export Control Classification Number) according to the US Export Administration Regulation (EAR)

c) for US defence products (so-called ITAR goods), the USML (United States Munitions List) category,

d) information on the non-preferential origin of their goods and their parts,

e) information on those goods which were manufactured based on controlled US technology and/or which contain controlled US components.

The Supplier shall also be obliged to notify Obrist, in writing (in particular the purchaser specified on the purchase order), of all other foreign trade data upon request and notify Obrist, in writing, about all changes of the above data, without the need for a request.

12.2 The legally binding take-over of re-export restrictions from the title of the technology transfer shall be restricted to goods for which an export authorisation is demonstrably necessary in the country of delivery (the Export Administration Regulation, as amended, of the US Department of Commerce shall apply to the USA) which are additionally identified in the delivery documents and for which the Supplier notifies that explicitly in the offers and order confirmations.

12.3 Suppliers based in the EU shall be obliged to transfer to Obrist the original of the (long-term or) supplier declaration for goods with preferential origin in accordance with Regulation (EC) no. 1207/2001, as amended, within one calendar week, after a relevant request. If the Supplier fails to comply with the above obligation or if their declaration fails to comply with the legal provisions, they will indemnify and hold Obrist harmless against any disadvantageous consequences arising therefrom.

13. FINAL PROVISIONS

13.1 Amendments and supplements shall be made in writing. That shall also apply to the cancellation of this clause.

13.2 If one or several of the provisions of these Terms and Conditions of Purchase and/or of any other contracts concluded between the parties are or become ineffective, or if they prove to contain a loophole, the other provisions shall remain in full force and effect and the ineffective provisions shall be replaced and the loophole shall be filled by an adequate, permissible provision which the contract parties would have wanted or should have wanted according to the sense and purpose of the conditions, if they had known the ineffectiveness or loophole.

13.3 The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be at the court with competent jurisdiction for Lustenau. Obrist shall, however, also be entitled to sue at the registered office of the Supplier.

13.4 The parties agree that any and all legal relations arising from this contractual relationship shall be governed by the laws of the Republic of Austria, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).