

# General Purchasing Conditions for Procurements (GPC)

Applicable to business transactions with entrepreneurs engaged in commercial activities or working as self-employed professionals, to public law entities and separate public-law assets.

## 1. General

- 1.1. Our General Purchasing Conditions for Procurements (hereinafter referred to as "GPC") shall apply exclusively. We shall not accept any conflicting or additional terms and conditions of a supplier (hereinafter referred to as "Supplier") or terms and conditions that differ from our GPC unless we have given our explicit written consent that their terms shall apply. Our GPC shall apply even if we, being aware of the Supplier's conflicting or additional terms and conditions or terms and conditions that differ from our GPC, accept, without reservation, the delivery or a service provided by the Supplier.
- 1.2. Our GPC shall also apply to all future deliveries made and services provided to us by the Supplier until a newer version of our GPC enters into force.
- 1.3. Individual contractual additions to and deviations from these GPC shall only be effective with our express consent.
- 1.4. The terms "Buyer", "we", "us" and/or "our", etc. used in these GPC refer to FUCHS LUBRICANTS GERMANY GmbH.

## 2. Withdrawal from contract, Force Majeure, end of contract

- 2.1. We may withdraw from the contract (hereinafter referred to as "Contract") if the Supplier, after expiry of an appropriate period of grace, fails to comply with his duties to deliver goods to or render services for us or for a company affiliated with us pursuant to section 15 et seq. of the German Stock Corporation Act (*Aktiengesetz/AktG*). Any further rights and claims of ours shall remain unaffected.
- 2.2. In the case of an external event that is unconnected to any business operations of ours and that could not have been averted even if the greatest possible care that can reasonably be expected had been taken, such as, for example, a pandemic, natural phenomena, war, terror, sabotage, labor disputes, operational disruptions or production stoppages arising through no fault of our own, malfunctions due to cyberattacks, fire and explosion damage or governmental decrees (hereinafter referred to as "Force Majeure"), the contractual parties (hereinafter referred to as "Parties") shall be exempt from their duties to render services for the duration and to the extent of the effect of such events. The Parties shall, as far as can reasonably be expected, be obliged to immediately inform each other in writing thereof. If one Party is released from its duties to render services, it shall without undue delay return to the other Party any advance payments that may have been made or any services that have been rendered in advance. If the restriction caused by Force Majeure lasts longer than three months, both Parties shall have the right to withdraw fully or in part from the Contract. Any further claims of ours shall remain unaffected.

- 2.3. After the services have been rendered or the Contract has otherwise come to an end for whatever reason, the Supplier shall without undue delay and at his own cost arrange for the dismantling and removal of his installations, tools and devices as well as other items that he has brought to, erected or stored on our premises. Any waste or building rubble resulting from the work undertaken by the Supplier must also be removed and expertly disposed of by the Supplier at his cost. If the Supplier fails to comply with these duties, we may, after the fruitless expiry of an appropriate period of time, undertake the work ourselves or commission a third party at the cost to the Supplier unless the respective breach of duty is not attributable to the Supplier.

## 3. Delivery, transfer of risk upon delivery and work performed, establishment of quantities, transfer of title

- 3.1. The delivery including transfer of risk, etc. takes place DAP (INCOTERMS in the version valid upon Contract conclusion) unless otherwise agreed in these GPC or elsewhere. The quantity of goods shall be established by us and shall be the basis for pricing.
- 3.2. The items must be packaged in such a way and secured for transport in such a manner that transport damage is avoided.
- 3.3. Upon handover, title to the items shall be transferred to us directly and free of encumbrances. The Supplier warrants that he has the right to sell on and transfer title to the goods.
- 3.4. In the case of work performed (*Werkleistungen*) the risk of the accidental destruction and accidental deterioration of the work performed shall pass to us upon our acceptance of such work.

## 4. Time of performance

- 4.1. Agreed times of performance (performance deadlines and performance periods) are binding. An agreed time of performance is only deemed to have been complied with if the Supplier has delivered the goods by the performance deadline or within the performance period pursuant to the respectively agreed INCOTERMS unless delivery complete with assembly/service has been agreed. In such a case, the time of the handover of the defect-free items following the appropriate execution of assembly/service shall be relevant to determine compliance with the agreed time of performance. In the case of work performed and services rendered, a time of performance is deemed to have been complied with if the Supplier has performed the work or rendered the service by the performance deadline or within the performance period. In the case of work performed, this includes the establishment of acceptability.
- 4.2. The Supplier shall be obliged to inform us without undue delay in writing if circumstances occur or become apparent to him suggesting that the agreed time of performance cannot be complied with. The information does not release the Supplier from his duty to render the services in good time.
- 4.3. If agreed performance deadlines and/or performance periods are not complied with, we are entitled to the statutory claims. We shall, in particular and in

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accordance with the law, have the right to request damages in lieu of the service and/or withdraw from the Contract after the fruitless expiry of an appropriate period of time (unless such a period of time can be avoided). We shall furthermore have the right, in the event of a delay of performance caused by the Supplier, to request the payment of a contractual penalty of 0.5 percent of the net value of the Contract for each week or part thereof but of no more than 5 percent of the net value of the Contract unless the delayed performance is not attributable to the Supplier. If we accept performance, we must reserve the contractual penalty at the latest until the date when final payment is made. Cases of Force Majeure shall be excluded. Any further rights of ours shall remain unaffected. Our right to performance shall not be excluded until the Supplier, at our request, has paid us damages in lieu of performance. Acceptance of delayed performance does not constitute a waiver of damages or contractual penalties.

- 4.4. Unconditional acceptance of a delayed delivery or performance does not constitute a waiver of damages that we, on account of late delivery or performance, are entitled to request.
- 4.5. Partial deliveries and partial performance shall, on principle, not be permitted unless we have explicitly consented thereto in writing and acceptance thereof can be reasonably expected from us.

## 5. Inspection of defects upon delivery, acceptance of work performed

- 5.1. Following deliveries, we shall notify the Supplier of any apparent (detected or detectable) defects as soon as the goods have been received, and hidden defects immediately after detection. The notification is deemed to be made on time if, in the case of apparent defects, it is received by the Supplier within a period of 10 working days calculated from the date of delivery or, in the case of hidden defects, within a period of 10 working days after detection; if, during the normal course of business, an inspection of the delivered goods cannot be performed within 10 working days after delivery, the period of timely notification shall be extended accordingly. In the case of deliveries that consist of a large amount of identical goods, we shall inspect an adequate quantity of the delivered goods to check for defects. If the goods, due to the inspection, were to become unsellable, the quantity to be inspected shall be reduced accordingly. If individual random samples of a delivery are defective, we may, at our discretion, request the removal of the defective items by the Supplier or, in accordance with the law, make claims for defects concerning the entire delivery. If, due to defects, an inspection beyond the extent customary for entry controls were to become necessary, the Supplier shall bear the costs of such inspection. If the notification were to arrive late or not at all, its timely dispatch shall suffice.
- 5.2. Upon completion, the work performed shall be accepted by us within an adequate period of time unless, due to the quality of the work performed, acceptance is excluded. In such a case, either party shall have the right to request a formal acceptance (*förmliche Abnahme*). Formal acceptance shall, unless otherwise agreed, take place in the presence of both Parties. Acceptance shall

be documented in a certificate of acceptance. This also applies to unsuccessful attempts at achieving acceptance. We shall be reimbursed by the Supplier for any costs arising from unsuccessful attempts at achieving acceptance unless the unsuccessful attempt at achieving acceptance is not attributable to the Supplier. Any further claims of ours shall be unaffected. Acceptance may also be refused if several immaterial defects are detected that, when added together, turn out to be material. Acceptance of partial deliveries shall be excluded unless we have, in advance, agreed thereto in writing.

## 6. Liability for defects involving deliveries and work performed

- 6.1. If the goods delivered or the work performed were to be defective, we shall, irrespective of our statutory claims, have the right to request that the Supplier, at our discretion and by way of subsequent performance, either remedy the defects (concerning delivery and work performed) or deliver defect-free goods (concerning deliveries) or engage in the performance of new work (concerning work performed). In the event of subsequent performance, the Supplier undertakes to bear all expenditure including, in particular, transport, travel, labor and material costs. This shall also apply if, in the case of deliveries, the goods have been taken to a location other than that indicated by us as the delivery address.
- 6.2. If the Supplier fails to comply with his obligation of subsequent performance within an appropriate time frame set by us, we may ourselves undertake the necessary measures at the expense and risk of the Supplier or ask a third party to do so. This does not apply to deliveries if the Supplier is not responsible for the owed performance not taking place upon expiry of the period of grace. As far as deliveries and work performed are concerned, setting a deadline can be dispensed with if the Supplier rejects both types of subsequent performance or if subsequent performance has failed or if we cannot be reasonably expected to accept such performance. Furthermore, the setting of a deadline may be dispensed with if special circumstances arise that, upon consideration of the interests of both Parties, justify the immediate assertion of claims for defects. Special circumstances arise in particular in urgent cases where subsequent performance by the Supplier is unlikely to compensate us for the imminent disadvantage suffered by us. If the setting of a deadline can be dispensed with, we shall have the right to undertake the necessary measures at the expense and risk of the Supplier even without unsuccessful expiry of an appropriate period of grace as long as we inform the Supplier thereof. Any further claims of ours shall remain unaffected.
- 6.3. The receipt of the goods and the processing of goods that have not yet been established as defective and criticized as well as the payment, the subsequent placement of orders and the commissioning of further work to be performed do not mean that we approve of the delivery or work performed or waive any claims for defects.

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- 6.4. Our claims for defects are subject to a limitation period of 36 months. In the case of deliveries, the period commences upon receipt of the goods, and in the case of work performed, it commences upon its acceptance. This period of limitations does not apply if the Supplier has deceitfully concealed the defect or if the subsequent sentence suggests otherwise. Notwithstanding sentence one, the period of limitations shall be five years if,
- (i) in the case of deliveries, defective goods have been used in the customary way for a structure and caused its defectiveness or if
  - (ii) in the case of deliveries or work performed, there has been a defect of the structure or if,
  - (iii) in the case of work performed, its success consists in the production, maintenance or change of one item or in the rendering of planning or monitoring services for such item.
- As to any defects criticized or otherwise indicated by us within the period of limitations, the claims for defects become time-barred at the earliest six months after the complaint has been made.
- 6.5. In the case of deliveries made to us by the Supplier, we have, apart from being entitled to making claims for defects, unrestricted statutory rights of recourse within a supply chain, provided that our claims for defects do not require the setting of an otherwise necessary deadline if we are obliged to take back goods that we sold on or if the purchase price paid to us has been reduced or if we are otherwise held liable for the defectiveness.
- 6.6. Further warranties of the Supplier shall remain unaffected.
- 7. Product liability, release, third-party liability insurance**
- 7.1. The Supplier shall be obliged to indemnify us from claims made by third parties and release us from any product liability in Germany or abroad unless, based on the principles of product liability law, he is not responsible for the defect of the product. Any further claims of ours shall remain unaffected.
- 7.2. The Supplier shall, as part of his indemnification obligation, bear all costs arising from potential legal proceedings and all expenses resulting from or in connection with any warning, exchange or recall measures carried out by us. We shall – as far as possible and as far as we can be reasonably expected to do so – notify the Supplier of the content and extent of any measures to be carried out and we shall give him an opportunity to state his case. The Supplier shall assist us with the measures to be carried out to the best of his knowledge and undertake all measures requested by us that he can be reasonably expected to perform.
- 7.3. The Supplier warrants to take out and maintain an extended product liability and recall insurance policy offering worldwide coverage and a level of cover appropriate for the goods and work performed, which amounts to at least 3 million euros for personal injury for each individual person, a minimum of 5 million euros per property damage and a minimum of 5 million euros for pecuniary loss. The Supplier shall, at our request, prove to us the taking out and existence of such an extended product liability and recall insurance policy. The Supplier refrains from engaging in any act and any omission that could put at risk the insurance cover. Any further claims of ours shall remain unaffected.
- 7.4. If the Supplier fails to duly meet his obligation as set forth in the preceding paragraph 3, we shall have the right but are not obliged to take out an extended product liability and recall insurance policy at the Supplier's cost.
- 8. Property rights**
- 8.1. We reserve all ownership rights, copyrights and other property rights to images, drawings, computations and other documents that we make available to the Supplier. They must not be made available to third parties without our explicit written consent and must only be used for the production of the goods and/or the rendering of the services based on our order. After completion of the order, they must be returned to us without request and without undue delay.
- 8.2. The Supplier warrants that the delivery and use of the goods and/or services does not breach any German or foreign patents, German utility models, licenses or other property and copyrights of third parties. This does not apply if the goods have been developed by us.
- 8.3. If we are held liable by a third party, the Supplier shall be obliged to indemnify us from such claims.
- 8.4. The indemnification obligation of the Supplier refers to all costs that arise from or in connection with claims made by a third party. We shall in particular have the right to obtain permission to use the goods from the third party at the cost of the supplier. The indemnification obligation does not apply if the Supplier is not responsible for the breach of the property rights of third parties.
- 9. Sub-contractors**
- The use of third parties for contractual performance (in particular sub-contractors of whatever rank) and/or their exchange requires our prior written consent. If the Supplier intends from the outset to use third parties to ensure contractual performance, the Supplier must notify us thereof upon submission of his bid.
- 10. Statutory minimum wage, posting of workers, ban of illegal employment**
- 10.1. The Supplier shall ensure that the sub-contractors and personnel agencies used by him to execute contracts for us, pay their staff the statutory minimum wage in accordance with the German Minimum Wage Act (*Mindestlohnengesetz/MiLoG*) and/or at least the minimum hourly rates on the basis of the statutory provisions pursuant to section 3a of the German Act on the Provision of Temporary Employees (*Arbeitnehmer-überlassungsgesetz/AÜG*) or, if the services to be rendered are subject to the area of application covered by the German Posted Workers Act (*Arbeitnehmer-sendegesetz/AEntG*), the minimum wage stipulated for the relevant industry. He must also ensure that the mandatory statutory obligations concerning the payment of contributions to the Germany social security system, the employers' liability insurance associations and other institutions such as the joint institutions of the contractual partners engaged in collective agreements set out in

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section 8 of the German Posted Workers Act (*Arbeitnehmerentsendegesetz/AEntG*) are complied with.

- 10.2. The Supplier shall, when choosing subcontractors and personnel agencies, ascertain whether the requirements set out under paragraph 10.1 are met and obligate them in writing to comply with the requirements. In addition, he shall ask them to provide a written confirmation that they in turn request compliance with the same requirements from the subcontractors and personnel agencies commissioned by them.
- 10.3. In the event that we are justifiably held liable by an employee of the Supplier or by an employee of a subcontractor (irrespective of the subcontractor's rank), or by an employee of a personnel agency considering us to be a guarantor, for the payment of the statutory minimum wage or the minimum wage paid in the industry or if we are held liable for the payment of contributions by one of the institutions of the contractual parties engaged in collective agreements set out in section 8 of the German Posted Workers Act (*Arbeitnehmerentsendegesetz/AEntG*), the Supplier shall indemnify us against such claims. This does not apply if he is not responsible for the breach of obligation. Any further claims of ours shall remain unaffected.
- 10.4. We shall have the right to terminate the Contract with the Supplier without notice if we are justifiably held liable under the provisions concerning the guarantor's liability pursuant to the German Minimum Wage Act (*Mindestlohngesetz/MiLoG*) or Posted Workers Act (*Arbeitnehmerentsendegesetz/AEntG*). Any further claims of ours shall remain unaffected.

## 11. Prices

- 11.1. Unless otherwise agreed, the price indicated in a Contract is deemed to be a fixed price. Furthermore, unless otherwise agreed in writing, the price for deliveries is DAP (INCOTERMS in the version valid upon Contract completion) and includes in particular the costs for packaging, shipping (including shipping facilities) and transport to the delivery address provided by us as well as other public levies. If, in individual cases, the shipping and transport costs are not included in the price and if we have agreed in writing to pay the shipping and transport costs, this shall only apply to the costs for the most inexpensive type of shipping and transport even if, to ensure compliance with the agreed delivery times, a faster type of transport may be required.
- 11.2. All prices are net prices excluding the respectively valid sales tax. If the goods are subject to a sales tax, it shall be calculated separately at the respectively valid rate.

## 12. Billing, payment conditions

- 12.1. Bills can only be processed by us if they – according to the specification contained in our orders and delivery call-ups – list the order number or delivery call-up number included therein. A single copy of each bill that must include the invoice number and other details that facilitate allocation is to be sent to the respective printed address; it must not be added to the actual delivery. The Supplier shall be responsible for all consequences resulting from non-compliance with these obligations

- 12.2. unless he can prove that they are not attributable to him. Unless otherwise agreed, bills shall be paid either within 14 days with a rebate of 2 percent being deducted for early payment, or within 30 days net from their due date and receipt of both the bill and the goods and/or the rendering of the service. Payment shall take place following invoice verification. In the case of defective delivery or defective work performed we shall have the right to postpone payment without losing our right to rebates, early-payment discounts or similar reductions until the Contract has been duly performed. The payment period shall therefore not commence until all defects have been fully remedied. If it is incumbent upon the Supplier to provide material tests, inspection certificates, quality documents or other information, the receipt of the goods shall trigger the start of the payment period only after the Supplier has also handed over to us the documents owed.

## 13. Compliance and social standards

- 13.1. The Supplier warrants, that
  - (i) he has not violated and will not violate any national or international laws against bribery, corruption and restrictions of competition when concluding and executing this Contract and that neither the Supplier nor, to the knowledge of the Supplier, his employees or persons acting on behalf of the Supplier have offered or will offer any direct or indirect payment in cash or in-kind or other advantages for the benefit of a public official or any other person, including our company organs or employees, in order to obtain an unlawful or improper advantage or contract; and
  - (ii) in connection with the provision of the services or any of them, the Supplier will duly observe at all times throughout the period of this Contract all applicable laws and regulations.
- 13.2. The Supplier warrants to comply with the 10 principles of the UN Global Compact and the 4 basic principles of the International Labor Organization (ILO).
- 13.3. The Supplier shall demand the obligations set out under this paragraph 13 equally from its business partners.

## 14. Export control and customs

- 14.1. The Supplier must comply with the respective applicable requirements set forth in national and international export, customs and foreign trade legislation. It is generally the responsibility of the Supplier to obtain any necessary shipping or export licenses for his goods unless, in line with the applicable foreign trade law, instead of the Supplier it is we or a third party who are obliged to apply for such licenses.
- 14.2. The Supplier shall provide us in writing and as early as possible with all the information and data required by us to comply with the applicable foreign trade laws concerning the export, shipping and import as well as, in the case of resale, the re-export of the goods and services; we shall require the following information for each item and each service:
  - (i) all applicable export list items of the German Foreign Trade Regulation or the Dual-Use Regulation of the EU or any EU-Embargo Regulation if the item is subject to such export restrictions;



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- (ii) the Export Classification Number (ECCN) according to the U.S. Commerce Control List (CCL) if the item or service in question is subject to U.S. Export Administration Regulations;
  - (iii) the mineral oil content if the item contains mineral oil;
  - (iv) the statistical Commodity Code (Customs Tariff Number) according to the current commodity classification of the foreign trade statistics or the HS (Harmonized System) Code;
  - (v) the country of origin (non-preferential origin) as defined by the trade law, if required, in form of a certificate of origin.
- 14.3. In addition, the Supplier shall, upon our request, make available long-term supplier declarations concerning preferential origin in the case of European suppliers or declarations of origin for beneficiary goods in the case of non-European countries. In the event of changes of origin, product features or services or of the applicable foreign trade law, the Supplier shall, unsolicited, update the export control and foreign trade data and notify us in writing without undue delay following the change of origin, product features or applicable foreign trade law.
- 14.4. The Supplier shall bear all costs and losses/damage suffered by us due to the absence or the faultiness of export control and foreign trade data unless the Supplier is not responsible for the breach of duty. Any further claims of ours shall remain unaffected.
- 15. Assignment**
- The Supplier may assign rights and claims only with our prior written consent. This does not apply to monetary claims.
- 16. Confidentiality**
- 16.1. All business or technical information made available to each other (including documents containing tenders) must be kept secret vis-à-vis third parties as long and as far as such information is verifiably not in the public domain, and must, within the company of the receiving party, only be made available to such persons who, in order to fulfil contractual duties, must necessarily be involved and who are therefore obliged to adhere to the principles of confidentiality (general confidentiality obligations set forth in employment contracts, etc. are sufficient). The duty of confidentiality shall apply for the duration of the business relationship between us and the Supplier as well as for a period of 3 years after termination of the business relationship. Without express prior consent of the disclosing party in text form according to section 126b of the German Code of Civil Law (*Bürgerliches Gesetzbuch/BGB*) such information must not be reproduced or used commercially. Upon request, all information originating from the disclosing party (if and where necessary including copies or records produced) and any loaned items must be returned or destroyed without undue delay in full. Exceptions are automatically produced back-up files and, as far as the receiving party, due to statutory or regulatory obligations, is obliged to keep certain documents, on the proviso that the receiving party shall, for an indefinite period of time and in line with the aforementioned provisions, treat the information confidentially and refrain from using it.
- 16.2. The information listed in paragraph 1 shall remain our property. We reserve all rights (including copyright and the right to apply for commercial property rights such as patents, German designs, trademarks, etc.) to such information.
- 17. Data protection**
- 17.1. While executing the Contract, the Parties are obliged to observe the statutory provisions on data protection, in particular the General Data Protection Regulation (GDPR) of the EU and impose compliance with these provisions upon their employees.
- 17.2. The Parties shall process the personal data received (names and contact data of the respective contacts) exclusively in order to execute the Contract and shall protect the data by undertaking security measures (Article 32 of the GDPR) that reflect the current state of the art. The Parties are obliged to erase the personal data as soon as its processing is no longer necessary. Any statutory data retention obligations shall remain unaffected hereby.
- 17.3. If one Party, while executing the Contract, were to process, on behalf of the other Party, personal data on a contract basis, the Supplier and we shall enter into an agreement concerning contract processing in accordance with Article 28 of the GDPR.
- 18. Applicable law, place of jurisdiction, place of performance**
- 18.1. The contractual relations are exclusively subject to German law excluding the conflict-of-laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.2. If the Supplier is a merchant pursuant to the German Code of Commercial Law (*Handelsgesetzbuch*), our registered office is the place of jurisdiction; we shall however also have the right, at our discretion, to file a suit against the Supplier in the court of his registered office or subsidiary or in the court of the place of performance.
- 18.3. The place of performance for the delivery is the respective location where, based on the order placed, the goods are to be delivered to or where the performance must be rendered. The place of performance concerning payment is the registered seat of the Supplier.
- 19. Language**
- These GPC are available in German and English. In the case of discrepancies, it is the German version of the GPC that takes precedence.