

# General Terms and Conditions of Purchase for Works and Services

As at: 01/26



## 1. General

**1.1** These General Terms and Conditions of Purchase for Works and Services (hereinafter referred to as "GTC") apply to all orders placed by FERCHAU Contract GmbH (hereinafter referred to as "Client") with its contractors (hereinafter referred to as "Supplier"), in particular when commissioning works and services, e.g. in the area of planning, documentation, development and design tasks, which are performed for customers of the Client (hereinafter referred to as "customer").

**1.2** The Client's general terms and conditions shall apply exclusively. They shall apply to all contracts between the Client and the Supplier, unless expressly agreed otherwise. The Supplier's general terms and conditions shall not apply even if they are used on documents and order confirmations or referred to therein. The Supplier's general terms and conditions shall only be recognised if the Client has expressly agreed to their validity in writing in advance.

## 2. Offers made by the supplier

Offers and cost estimates shall be provided by the Supplier to the Client free of charge. Offers and cost estimates from the Supplier shall be written in German and/or English, at the Client's discretion, unless otherwise agreed in writing.

## 3. Order, conclusion of contract and order of precedence

**3.1** Only when the Client places an order does a binding offer to the Supplier arise. The order can be placed by the Client in text form. The Supplier is obliged to check the Client's order immediately upon receipt and either accept or reject it.

**3.2** The binding contract (hereinafter referred to as "order" or "purchase order") shall come into effect when the Client receives the Client's purchase order signed by the Supplier within the specified period, whereby simple electronic transmission of the scanned document shall suffice. The Client may freely revoke their declaration until receipt of the Supplier's declaration of acceptance.

**3.3** No rights against the Client can be derived from verbal or telephone orders, information, commitments, etc. provided by the Client, unless they have been confirmed in writing by the Client or the Client has demonstrably waived the written form.

**3.4** Unless otherwise agreed in the order, the following order of priority shall apply to the contracted services, if available:

- (i) the Client's order, including any additional agreements;
- (ii) these General Terms and Conditions of Business of the Client;
- (iii) the Client's code of conduct;
- (iv) the document re: the common understanding of cooperation in the Client's contract for work and services;
- (v) the statutory provisions of the Federal Republic of Germany, with the exception of the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

## 4. Delivery and service dates

The delivery and service dates and deadlines specified in the order or otherwise agreed are binding for the Supplier and are calculated from the date of the order.

## 5. Order execution

**5.1** The Supplier shall perform its services in its own name and on its own account as an independent contractor. It shall have no authority to represent the Client in legal transactions or to collect payments on the Client's behalf.

**5.2** The Client shall provide the technical, operational and other information and guidelines necessary for the execution of the orders. The Supplier shall be responsible for the execution and success of the order.

**5.3** The Supplier shall be solely responsible for instructing, guiding and supervising its vicarious agents (hereinafter referred to as "subcontractors"), even if the order is carried out at the Client's premises or those of a third party. This shall not affect the Client's right to issue order-related instructions concerning the work results.

**5.4** The Supplier undertakes to take into account the operational interests of the Client or the Client's customer when providing the service and to deploy its personnel in accordance with the operational and structural conditions.

**5.5** If the Supplier realises that the service to be provided by him is not sufficiently, clearly, correctly or completely described in the order and its annexes, or is not feasible, or if he considers other information provided to him to be insufficiently specified, he must notify the Client of this circumstance and the consequences apparent to him without delay, as a minimum in text form.

**5.6** The Supplier assures that it has both the residence permit required to perform the service and the work permit required to perform the service. This obligation applies equally to employees or subcontractors employed by the Supplier. If there are any changes in this regard, the Supplier is obliged to inform the Client immediately.

## 6. Term and termination

**6.1** The term of the order shall commence upon signature of the order or, if applicable, upon the commencement of the order specified in the order. Each order is subject to the condition precedent or condition subsequent that and as long as a corresponding contract for the project underlying the order (hereinafter referred to as the "customer order") exists between the Client and the customer for whom the Supplier is employed.

**6.2** Notwithstanding other contractual or statutory termination rights, the Client is entitled to terminate the order with 7 days' notice if the customer

- (i) does not accept or no longer accepts the use of the Supplier or the subcontractors used by the Supplier;
- (ii) the customer order is suspended or otherwise postponed for reasons for which the Client is not responsible;
- (iii) the customer order is no longer being carried out to the planned extent, particularly with regard to its content or duration.

In the event of termination of the order, the Supplier shall retain the right to remuneration for the services rendered up to that point; however, the amount of this claim shall be limited to the amounts that the Client has received from the customer for these services. If insolvency proceedings against the customer's assets or comparable insolvency-related insolvency lead to a loss of remuneration, this limitation shall not apply.

**6.3** This shall not affect the right to terminate the contract without notice for good cause.

**6.4** Termination must be in writing.

**6.5** Upon completion of the order, the Supplier shall return or delete the work and business documents and other work materials provided to it immediately and without request, at the discretion of the Client. The assertion of a right of retention in this regard is excluded.

The Supplier shall only use passwords and encryption programmes on the systems of customers for whom it is working on a project in accordance with the rules existing or applied by them and shall disclose or hand them over to the Client or the customer concerned immediately at any time at the request of the Client or the customer. The Supplier shall ensure that it is able to do so at any time.

In the event of a culpable breach of the obligation to surrender, the Supplier shall be obliged to pay a contractual penalty to the Client, the amount of which shall be determined by the Client at its reasonable discretion and which may be reviewed by the competent court in the event of a dispute. The Client reserves the right to claim further damages. However, the contractual penalty paid shall be offset against this. Payment of the contractual penalty by the Supplier does not release the Supplier from compliance with the obligations set out herein.

## 7. Delay in delivery and performance

**7.1** In the event of a delay in delivery or performance, the Supplier shall immediately notify the relevant receiving office/branch of the Client in writing of the reasons for and duration of the delay. Irrespective of this, the Client shall be entitled to claim a contractual penalty of 0.2% of the value of the agreed delivery for each working day of delay, up to a maximum of 5% in total. This shall also apply if the Client is entitled to withdraw from the contract. The Client reserves the right to assert such a contractual penalty until the time of full payment. The statutory claims in such a case remain unaffected.

**7.2** The Supplier may only invoke the Client's failure to fulfil necessary and contractually agreed obligations to cooperate if, despite a request in writing, these obligations are not fulfilled within a reasonable period set by the Supplier.

**7.3** The Client is entitled to offset a corresponding contractual penalty against claims by the Supplier.

**7.4** Insofar as the subject matter of the order involves work performance, the necessary delivery documents must also be enclosed with each delivery. In the event of incomplete, incorrect or late delivery documents, the Supplier shall bear the resulting additional costs and compensate the Client for any damages incurred. Deliveries shall be made free to the delivery address, including proper packaging. If the Supplier has undertaken the installation or assembly of the delivery item, the Supplier shall bear all necessary ancillary costs such as travel expenses, provision of tools, etc., unless otherwise agreed.

## 8. Exemption from acceptance

If the Client is prevented from accepting the delivery or service due to industrial action or force majeure, the Client shall be exempt from the obligation to accept delivery or service in a timely manner for this period.

## 9. Suspension

The Client may suspend the further execution of an order or parts of an order at any time by notifying the Supplier in writing. Upon receipt of such notification, the Supplier shall (i) cease work on the contractual services and (ii) refrain from placing any further orders with third parties in relation to the contractual services.

The Supplier may demand compensation for any reasonable and verifiable additional costs incurred as a result, which must be notified in advance and approved by the Client.

## 10. Transfer of risk

In the case of services provided under a contract for work and services, the risk shall remain with the Supplier until the Client has accepted the entire service in full.

## 11. Delivery quantities

Insofar as this is a contract for work and services, the Supplier is only permitted to deliver the quantity ordered by the Client. Deviating quantities will only be accepted by the Client if this has been expressly agreed in writing. The Supplier undertakes to provide all necessary accompanying documents, consignment notes, Supplier declarations, test reports and other documents in good time at its own expense. If acceptance of the delivery depends on complete documentation, the Client shall not be in default of acceptance if the relevant documents were not submitted by the Supplier in good time or if the Client did not have sufficient time to check them.

## 12. Partial deliveries

**12.1** If services under a contract for work and services have been commissioned, the following shall apply to partial deliveries of a contractually agreed service: the service shall only be deemed to have been rendered by the Supplier once it has been delivered in full and free of defects. The Supplier shall bear the additional costs incurred by partial deliveries in relation to transport, packaging, etc. The Client is entitled to offset any additional costs against the Supplier's claims. Partial deliveries shall not be considered as separate transactions.

**12.2** All claims of the Client with regard to a contractually agreed service shall remain unaffected by partial deliveries, in particular with regard to liability for material defects. Unless expressly agreed otherwise, the Supplier shall be responsible for the overall functionality of the work owed. In the case of call-off orders, the Supplier is obliged to provide all call-off quantities in such a way that it can meet the delivery date as a fixed date.

## 13. Quality and condition

**13.1** If certain quality, grade or service level agreements have been agreed in relation to the provision of services, these shall be deemed to be agreed characteristics.

**13.2** The Supplier assures that all services owed by him comply with the order and all applicable legal provisions – in particular the regulations and guidelines issued with regard to execution, quality, colouring, accident prevention and environmental protection in the version applicable at the time of performance – as well as the state of the art.

**13.3** Furthermore, the Supplier assures that, in the case of a service under a contract for work and services, its work is suitable for the use or purpose agreed in the order or foreseeable use or purpose, or for the usual use or purpose of an order of the same type.

## 14. Prices

**14.1** Prices may be agreed as a binding fixed price, a recommended price, on an hourly basis or according to measurements. They are generally subject to

statutory value added tax. Invoices for orders shall be issued in instalments according to the progress of work, which shall be agreed separately. The Supplier is responsible for paying tax on his income and shall reimburse the Client for any income tax he has paid and indemnify the Client against any income tax liability.

**14.2** Unless otherwise agreed in writing, prices are quoted free at factory, duty paid (DDP according to Incoterms 2000), including packaging, plus the value added tax applicable at the time.

**14.3** Costs for quotations, samples, test prints, samples and similar preparatory work can only be charged if this has been agreed in writing.

## 15. Order confirmations, invoices and credit note procedures

**15.1** Order confirmations shall be sent to the Client by separate post (a scan by e-mail is sufficient). All documents shall specify the services provided and the order number.

**15.2** If remuneration based on expenditure and the use of relaX (see Section 18.1) has been agreed in the order, billing between the Client and the Supplier shall be carried out exclusively by means of a credit note procedure. The Supplier expressly agrees to (i) billing by means of credit notes and (ii) electronic transmission of the invoice (including credit notes).

**15.3** The Supplier shall keep a complete and accurate record of the time spent in relaX as proof of its service provision. This record shall be sent via relaX to the Client's end customer for approval, who must confirm it (hereinafter referred to as "customer verification"). The customer verification must then be confirmed immediately by the Client's contact person and serves as the basis for billing.

**15.4** Unless otherwise agreed in the order, invoicing shall be based on the time reported by the Supplier on the basis of the customer verification and after approval by the Client. The Client undertakes to issue a credit note in accordance with Section 14 (2) sentence 2 of the German Value Added Tax Act (UStG) in the amount approved in accordance with Clause 2 and to send it to the Supplier immediately upon receipt of the customer verification (within normal business hours). The complete records of the time spent and copies of the receipts for reimbursable expenses (if agreed) must be submitted via relaX by 12 noon (Monday-Friday) on the 5th weekday of the following month at the latest. The Client shall only make payment upon complete and proper submission of the customer verification. The Client is entitled to withhold payments until the customer verification has been submitted without this constituting a default in payment.

**15.5** The Supplier undertakes to provide the Client with all information and details required for the credit note in a timely and accurate manner. This also includes information that excludes domestic VAT liability, for example, the applicability of the small business regulation or a place of performance abroad. In the event of any uncertainty or doubt, the Supplier shall provide information at an early stage and communicate all relevant information. The Supplier is obliged to continuously check the accuracy of the information in relaX and to ensure that it is complete and correct.

**15.6** In exceptional cases, particularly in the event of technical malfunctions, the Supplier may submit the approved records of time spent by email. Once the Client has received the approved records of time spent, the Client shall immediately issue the Supplier with a credit note for the remuneration of the services listed, which shall be sent to the Supplier as a booking and payment document.

**15.7** The credit note procedure means that the Supplier is no longer required to issue an invoice to the

Client in the cases specified in this clause. The Supplier must check the credit note immediately. Any objection by the Supplier to the accuracy of the credit note must be made within one month of receipt of the credit note. If the Supplier fails to make a timely complaint, the credit note shall be deemed to have been approved, subject to subsequent corrections.

**15.8** Any deviations from the above provisions require a written agreement between the Client and the Supplier.

**15.9** If no remuneration based on actual costs and no use of relaX has been agreed, or if the order is based on a contract for work and services, the Supplier is obliged to issue an invoice in accordance with the conditions set out in clause 15.10:

**15.10** Invoices shall be sent to the Client exclusively in electronic form in PDF format by email to the designated e-mail address [invoice@ferchau.com](mailto:invoice@ferchau.com). The Supplier shall ensure that its invoices meet the minimum legal requirements (in particular according to Section 14 of the German Value Added Tax Act (UStG)) and contain the additional information requested by the Client in the respective order. Invoices from the Supplier that do not meet the above requirements cannot be processed until they have been completed. The Client will notify the Supplier of this in each individual case. The Supplier must then immediately issue and submit a new invoice that meets the requirements.

## 16. Terms of payment

**16.1** The payment period shall commence upon acceptance (in the case of work performance) or complete performance (in the case of service contracts), but no earlier than upon receipt of a proper invoice or creation of the credit note by the Client, and not before the agreed delivery date. If no separate payment period has been agreed in writing, payment shall be made net within 14 days less a 2% discount. Payment shall be made subject to invoice verification.

**16.2** The retention of title may only be exercised in the event of prior withdrawal from the order.

## 17. Supplier's expenses, tools, documents and drawings

**17.1** If the Supplier performs the agreed activities on its own premises, it shall also bear the respective costs incurred. These shall not be reimbursed separately by the Client. If the activities are to be carried out on the premises of the Client or third parties, the Client shall provide the supplier with the necessary premises or material resources in return for payment.

**17.2** The Supplier undertakes to treat any tools, testing equipment, documents, plans, samples, drawings, data carriers, etc. received from the Client for the purpose of executing the order with the necessary care and confidentiality. The Supplier shall not acquire any right of retention whatsoever in relation to these items. The Supplier may only make them available to third parties for use in accordance with the contract. If the Client suffers damage as a result of noncompliance with this provision, the Supplier shall be obliged to pay compensation.

## 18. Use of relaX and other applications

**18.1** The Supplier undertakes, within the scope of order execution, to use the "relaX" application provided by the Client, which is used for the legally compliant management of work and service contracts, at the Client's request within the scope of communication with the Client and the customer. Use is subject to the relaX terms of use, which can be accessed on the Client's website.

**18.2** Alternatively, the use of other collaboration applications may be required for the execution of orders by the Client's customers. The Client shall inform the Supplier of this in the order. In such cases, the Supplier undertakes to use these applications.

## **19. Warranty for material defects and liability**

**19.1** Acceptance of work contract services shall take place after completion. Partial acceptance shall not take place. A report shall be drawn up on the acceptance, which shall be signed by both parties.

**19.2** In the case of services provided under a contract for work and services which the Client intends to resell to a customer, the limitation period for the Client's claims for defects against the Supplier shall commence as follows:

- (i) If the customer commissions the work or carries out a final technical acceptance, the limitation period for claims for defects shall commence at this point in time.
- (ii) If neither commissioning nor final technical acceptance takes place, the limitation period for claims for defects shall commence upon delivery of the work to the customer.

**19.3** In the event of defects in the contractually agreed work performance, the Client shall have the exclusive right to choose the type of subsequent performance. The Client may, at its discretion, demand rectification or new production of the work. The Supplier may only refuse the type of subsequent performance chosen by the Client in the cases provided for by law.

**19.4** The limitation period for claims for defects in contractual work is suspended during the period between notification of the defect by the Client and its rectification or a possible final refusal by the Supplier to rectify the defect. For those parts of the work that are repaired or replaced, the limitation period for claims for defects shall recommence upon restoration of the contractual, defect-free usability of the work. The provision in the preceding sentence shall not apply if the Supplier was not legally obliged to replace or repair the work.

**19.5** In all other respects, the Supplier's liability shall be governed by the statutory provisions.

## **20. Product liability**

If the Client is held liable by third parties on the basis of product liability caused by a defect in the object of delivery supplied by the Supplier, the Supplier undertakes to indemnify the Client against such claims and to bear all costs and expenses incurred in this connection, including the costs of any legal proceedings. In all other respects, the statutory provisions shall apply.

## **21. Intellectual property, rights of use and exploitation**

If, in the course of cooperation between the parties, know-how, copyrighted work, inventions, designs, trademarks, title, ideas, documentation, reports, data and documents are created (hereinafter referred to as "work results"), the following shall apply:

**21.1** The Supplier hereby irrevocably transfers to the Client the right to the industrial property right or to the industrial property right in all work results covered by the order as soon as they are created. The Client accepts the transfer. If the transfer of these rights requires declarations by the Supplier or the performance of actions vis-à-vis third parties, the Supplier undertakes to make the necessary and appropriate declarations and to perform the actions. If a complete transfer of rights is not possible, the Supplier shall grant the Client the exclusive, transferable, sublicensable right of use of these work results, including the right to comprehensive exploitation, production, processing and redesign, excluding the Supplier, without restriction in terms of space, time or content. The agreed remuneration shall settle all claims of the Supplier in connection with the above granting of rights.

**21.2** The Supplier hereby irrevocably grants the Client and the customer, without additional remuneration, the simple, transferable and sublicensable right

of use, including the right to comprehensive exploitation, processing and redesign, which is not restricted in terms of space, time or content, to the Supplier's own property rights that already existed at the time of conclusion of the contract and which have been incorporated into the work results. The Supplier is obliged to inform the Client in advance of any existing intellectual property rights of its own.

**21.3** If the Supplier engages employees or third parties to produce work results, it must ensure that it is granted the rights to their work results to the extent specified above.

**21.4** The Supplier is only entitled to use opensource software with the written consent of the Client (email is sufficient). In any case, the Supplier is responsible for complying with the relevant licence conditions.

**21.5** The Supplier shall inform the Client in writing without delay of the creation of work results.

**21.6** The Supplier is obliged to immediately provide the Client, upon request and without being asked, upon completion of the order, with all documents and information relating to the work results in a format that can be evaluated by the Client. These documents and information shall include, in particular, all documentation, all design drawings, plans and other technical documents relating to the work results.

**21.7** The Supplier shall not register any property rights to work results without the written consent of the Client.

**21.8** The Supplier shall ensure that third parties cannot assert any industrial property rights (e.g. patents, utility models, trademarks, designs), copyrights and related property rights or other rights against the Client or its customers.

**21.9** If the Client is held liable by third parties for the infringement of property rights or rights of use in connection with contractual services or work results to which the Client is entitled under this clause, the Supplier shall indemnify the Client upon first request.

**21.10** In the event of any employee inventions or suggestions for improvement made by employees of the Supplier in the course of executing individual orders, the Supplier shall be obliged, at the request of the Client, to make use of the invention without restriction or with restriction and to transfer the resulting rights to the Client. Clause 21.1, last sentence, shall apply accordingly. The Supplier further undertakes not to make use of its option to release the invention in accordance with Section 6 (2) of the German Employee Inventions Act (ArbnErfG). The German Employee Inventions Act shall apply mutatis mutandis.

## **22. Insurance**

The Supplier shall insure its liability risk by taking out liability insurance covering personal injury, property damage and financial loss in an appropriate amount and shall maintain this insurance at least until the end of all obligations arising from the contractual relationship. Upon request, the Supplier shall provide the Client with proof of this insurance without delay.

## **23. Relationship of the Supplier to third parties**

The Supplier shall be entitled to work for other Clients. This shall not require the prior consent of the Client.

## **24. Subcontracting**

The Supplier is entitled to use third parties (e.g. subcontractors) to perform its own services after written approval (e-mail sufficient) by the Client, which may not be unreasonably withheld. The Supplier must apply to the Client in good time in advance for the use of third parties. If the Supplier uses subcontractors to perform the service, it is obliged to impose the same obligations on the subcontractor as those set out in these contractual terms and conditions. The Supplier shall provide evidence of this to the Client upon request.

## **25. Duty to inform**

The Supplier is obliged to inform the Client immediately if in connection with his activities he employs no staff liable to pay compulsory insurance (with the exception of family members), regularly and essentially works only for the Client, and does not operate in the market on the basis of entrepreneurial activity, including the associated opportunities and risks, or if there are changes to the information provided in its Supplier self-disclosure.

## **26. Minimum wage**

**26.1** The Supplier guarantees the Client that it will comply with the provisions of the Minimum Wage Act (MiLoG) in its currently valid version with regard to its own employees. This includes, in particular, the obligation to pay the minimum wage at the respective statutory rate to the personnel employed within the framework of the contractual relationship with the Client, to comply with the required documentation obligations and not to circumvent the statutory minimum wage regulations.

**26.2** The Supplier's obligation to comply with the provisions of the MiLoG in its currently valid version also extends to the personnel employed by its subcontractors and, in turn, their subcontractors.

**26.3** Upon request, the Supplier shall immediately provide the Client with evidence, in the form of relevant documents, that it and, where applicable, the subcontractors commissioned by it – as well as their subcontractors – are fulfilling or have fulfilled their obligations towards their employees.

**26.4** The Client also has the right to inspect the (pseudonymised) salary and wage lists of the employees employed by the Supplier and, if applicable, its subcontractors – as well as their subcontractors.

**26.5** If the Supplier or a subcontractor commissioned by it – as well as their subcontractors – fails to comply with any of the above provisions, the Client shall be entitled to terminate individual or all contractual relationships between the Supplier and the Client without notice.

**26.6** The Supplier shall indemnify the Client against all third-party claims and liabilities to third parties incurred by the Client as a result of a breach of the aforementioned statutory provisions by the Supplier or a subcontractor commissioned by the Supplier, as well as their subcontractors.

## **27. Confidentiality and advertising**

**27.1** "Confidential information" within the meaning of this clause is all non-public business, commercial, technical or other information, such as data, drawings, drafts, sketches, plans, descriptions, experiences, samples, which are made available or will be made available to the Supplier directly or indirectly in verbal, written, electronic or physical form by the Client on the occasion of or within the scope of the cooperation, regardless of whether this information is marked as "confidential" or "protected" and regardless of whether the Client's intention to treat this information as confidential is apparent from the nature of the information or otherwise.

An "affiliated company" within the meaning of this clause is a company

- (i) which is directly or indirectly controlled by a party or
- (ii) by which a party is directly or indirectly controlled, or
- (iii) which is directly or indirectly controlled by a company which in turn directly or indirectly also controls the party concerned.

The parties understand the term "control" to mean the right to exercise more than half of the voting rights or to appoint the company's management personnel.

**27.2** The Supplier undertakes to treat all confidential information and knowledge provided to it by the Client during the term of the cooperation as strictly confidential, to use it exclusively within the scope of the cooperation and not to disclose it to any third party without the Client's written consent.

Third parties within the meaning of this clause do not include affiliated companies, the Supplier's own employees and the employees of affiliated companies, subcontractors and external consultants, provided that and to the extent that their involvement is necessary within the scope of the cooperation.

The Supplier undertakes to impose a confidentiality obligation comparable to the provisions of this clause 27 on those aforementioned companies and persons who become aware of the confidential information in the course of their work, and, to the extent permitted by law, also for the period after the termination of their employment relationships. This obligation shall only apply insofar as they are not already bound to secrecy by employment, service or other contractual agreements.

The Supplier shall protect the confidential information with the same care with which it protects its own business and trade secrets, but at least with the care of a prudent businessman.

**27.3** The confidentiality obligations under this clause shall not apply if and to the extent that the information in question can be proven:

- (i) to have been already lawfully known to the Supplier at the time of its transmission;
- (ii) to have been or become publicly known without the Supplier's involvement;
- (iii) to have been disclosed to the Supplier by a third party without any obligation of confidentiality;
- (iv) to have been developed independently of the Supplier and without recourse to confidential information belonging to the Client;
- (v) to have been expressly authorised in writing by the Client for use and disclosure;
- (vi) had to be disclosed due to a binding official or judicial order or mandatory legal regulations.

If the Supplier invokes one of the above exceptions, it must provide appropriate evidence of the conditions for this.

**27.4** Information provided within the scope of the cooperation shall remain the property of the Client. The Supplier shall only make copies of the information obtained to the extent that these are necessary for the cooperation.

The parties agree that the actual provision of confidential information does not constitute the granting of a licence or other permission to use or exploit the confidential information. No rights or obligations beyond those set out in this clause shall be established.

The disclosure of confidential information does not establish any rights to industrial property rights or copyrights. The parties agree that the disclosure of confidential information does not establish any right of publication or prior use within the meaning of the Patent Act and the Utility Model Act.

The Supplier also undertakes not to reverse engineer, decompile, disassemble or otherwise examine the composition or manufacture of the Client's confidential information, unless this is necessary within the scope of the cooperation and the Client has given its prior written consent.

**27.5** The Supplier undertakes, upon termination of the cooperation or upon written request by the Client, to immediately surrender or, at its discretion, destroy all information physically transmitted by the Client within the scope of the cooperation, such as documents, sketches, etc. The Supplier's own records, compilations and evaluations containing confidential information shall be destroyed at the Client's request. Information transmitted and/or stored electronically shall be deleted accordingly.

The aforementioned obligation to return or destroy information does not apply

- (i) to confidential information in electronic format (e.g. e-mail) that is copied as part of routine back-up procedures, or
- (ii) in the event that the Supplier, its affiliated companies, its subcontractors or its external consultants are required to retain the confidential information or copies thereof due to mandatory legal provisions.

Upon request, the Supplier must confirm this in writing to the Client in the event of destruction and deletion.

**27.6** Confidential information is provided on an "as is" basis. Any warranty or liability with regard to the accuracy, correctness, freedom from thirdparty property rights, completeness and/or usability of the confidential information is excluded to the extent permitted by law.

**27.7** In the event of a culpable breach of confidentiality, the Supplier shall be obliged to pay a contractual penalty, the amount of which shall be determined by the Client at its reasonable discretion and which may be reviewed by the competent court in the event of a dispute. The Client reserves the right to claim further damages. However, the contractual penalty paid shall be credited against this. Payment of the contractual penalty by the Supplier shall not release the Supplier from compliance with the obligations set out herein.

**27.8.** The obligations arising from this clause shall remain in force – with the exception of the obligations regarding data secrecy and the general obligation to maintain business secrets in accordance with the Trade Secrets Act or other applicable local legal regulations for the protection of trade secrets to which the legal regulations apply – for a period of at least ten (10) years after the end of the contract – other applicable local legal regulations for the protection of trade secrets to which the legal regulations apply – shall continue to exist for a period of at least ten (10) years after the end of the contract. They shall expire if and to the extent that the knowledge contained in the confidential information provided has become generally known or was already known to the Supplier at the time the contract was concluded without this being caused by a breach of contract on the part of the Supplier.

**27.9** The business relationship with the Client may only be referred to in the Supplier's advertising with the written consent of the Client.

## **28. Data protection**

**28.1** Due to the nature of the task, the Supplier is obliged to maintain the confidentiality of personal data in accordance with Art. 5 (1) f, Art. 32 (4) of the General Data Protection Regulation (GDPR), to which he may have access or become aware of in the course of his work. The Supplier is prohibited from processing personal data without authorisation. This obligation shall continue to apply even after the Supplier has ceased its activities.

**28.2** The Supplier is aware that breaches of confidentiality pursuant to Art. 83 (4) GDPR, Sections 42 and 43 of the German Federal Data Protection Act (BDSG) and other applicable criminal provisions may be punished with imprisonment or a fine.

**28.3** The Supplier is obliged to require all employees and other vicarious agents employed by it in the performance of the services to comply with data secrecy and confidentiality in accordance with the GDPR in writing. Proof of this obligation must be provided to the Client immediately upon request.

**28.4** If required by the task at hand, the Supplier undertakes to conclude a data processing agreement in accordance with the requirements of the GDPR at the request of the Client.

**28.5** In the event of a culpable breach of the data protection provisions under this clause, the Supplier shall be obliged to pay a contractual penalty the amount of which shall be determined by the Client at its reasonable discretion and whose amount may be reviewed by the competent court in the event of a dispute. The Client reserves the right to assert further claims for damages. However, the contractual penalty paid shall be credited against this. Payment of the contractual penalty by the Supplier shall not release the Supplier from compliance with the obligations set out herein.

## **29. Compliance**

Integrity and compliance are of essential importance to the Client. The Client attaches great importance to social responsibility in the context of its business activities. The Supplier therefore undertakes to take all necessary measures to prevent corruption and other criminal offences and to comply with the standards set out in the Client's Code of Conduct when placing the respective order. The currently valid version of the Code of Conduct is available on the Client's website at <https://www.ferchau.com/go/code-of-conduct>. The Supplier undertakes to require its employees and subcontractors, whom it employs in connection with the fulfilment of its contractual obligations towards the Client, to comply with the Code of Conduct. At the Client's request, the Supplier shall provide evidence of the commitment of its employees and subcontractors.

## **30. Audit**

**30.1** The Client has the right to carry out audits at the Supplier's premises at any time with regard to compliance with the above compliance regulations, confidentiality obligations and data protection requirements, or to have such audits carried out by an auditor to be appointed in each individual case. The Client has the right to verify the Supplier's compliance with the aforementioned obligations in its business operations by means of random checks, which must generally be announced in good time.

**30.2** The Supplier is obliged to cooperate to the best of its ability with the Client or the inspector appointed by the Client in this regard.

## **31. Place of performance, place of jurisdiction and applicable law**

**31.1** The place of performance and jurisdiction is Gummertsbach, Germany. However, the Client is also entitled to assert its claims at the Supplier's general place of jurisdiction.

**31.2** The mutual legal relationships shall be governed by the law of the Federal Republic of Germany, excluding international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **32. Written form**

Amendments and additions as well as termination of the contractual relationship must be made in writing. This also applies to the waiver of the written form requirement itself. The written form requirement is satisfied by the electronic exchange of scanned signed documents. In addition to the handwritten document required by law, the written form within the meaning of these GTC also includes (i) the electronic exchange of signed and scanned documents, and (ii) an electronically signed and electronically transmitted document, in which a digital protocol of the document history (certificate of completion) of the provider ensures that the signatory is identifiable and any subsequent changes to the data are recognisable.

## **33. Severability clause**

Should individual provisions of these Terms and Conditions of Purchase be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the legal and economic purpose of the invalid provision.