

## **General Terms and Conditions of Procurement**

### **1. Scope**

- 1.1. All contracts, purchase agreements, purchase orders and delivery call-offs (hereinafter collectively referred to as "**Orders**") issued by HypTec GmbH, Austria, registered in the Commercial Register at the Regional Court for Civil Matters Graz under FN 342766v (hereinafter referred to as "**HypTec**") are based exclusively on these General Terms and Conditions of Procurement ("**GTCP**") and any contractual provisions that may appear separately on HypTec's business documents. Any terms and conditions of sale of the Contractor deviating from these GTCPs shall only apply insofar as HYPTEC has expressly agreed to them in writing. Amendments, addenda and other ancillary agreements shall only be valid if made in writing. It is the responsibility of the individual Contractor to review the GTCP before submitting an offer and to resolve any open questions with HypTec before submitting an offer.
- 1.2. The Contractor shall supply goods or services in full compliance with the agreed specifications, drawings, descriptions and other documents.
- 1.3. The latest version of the GTCP is available on HypTec's website ([www.hypotec.at](http://www.hypotec.at)). Amendments to the GTCP shall become effective if they have been notified to the Contractor and the Contractor does not object to the amendment in writing within 14 days.

### **2. Objective**

- 2.1. HypTec has set itself the objective of optimally fulfilling its clients' agreed requirements and justified expectations. This objective can only be achieved if all internal and external parties involved perform their tasks in accordance with the principles of full and optimum compliance with stated requirements and if all parties are themselves fully committed to ensuring quality.
- 2.2. A prerequisite for initiating or continuing a business relationship and placing an order with the Contractor is the maintenance of a quality management system in accordance with ISO 9000 series (the latest version valid at the time). Willingness to work actively on problem solving is also expected.

### **3. Order placement and terms and conditions of order**

- 3.1. Orders shall only be legally binding on HypTec if they are issued in writing and signed by an authorised signatory. Orders placed orally shall only be effective if HypTec has confirmed them in writing.
- 3.2. The Contractor undertakes to confirm orders from HypTec in writing without delay, but at the latest within 3 working days of receipt.
- 3.3. If, on the basis of its expertise, a Contractor is able to discern that an order from HypTec is incomplete or that the objective pursued by HypTec cannot be achieved with the products ordered, it must inform HypTec of this immediately.
- 3.4. Any changes (in particular those affecting the supply process, price, terms and conditions, deadlines, quantities and specifications) must be reported to HypTec independently and without

delay. Changes shall in all cases only be valid if confirmed in writing by HypTec. Absent HypTec's written consent, the Contractor may not make any changes (in particular to the properties or manufacture of the contract deliverables).

- 3.5. The subcontracting of an order by the Contractor to third parties (subcontractors) shall require HypTec's prior written consent. The Contractor shall be liable for the proper and timely fulfilment of the order by the third party (subcontractor).
- 3.6. The Contractor shall comply with the recognised rules of technology and any agreed specific requirements of HypTec for the development, manufacture and delivery of its deliverables. It is obliged to comply with and fulfil all applicable legal provisions and relevant technical rules, in particular those in the country of sale, in accordance with the latest version of these rules. The Contractor shall be responsible for the timely compliance with all legal requirements for the production and delivery of the deliverables.

#### **4. Terms of delivery**

- 4.1. The Contractor shall faithfully adhere to all dates, deadlines and quantities agreed or - in the absence of an express agreement – as specified in the order. The receipt of the goods at the place of performance shall be determinative regarding compliance with the delivery date or the delivery period. Unless otherwise agreed, the place of performance is HypTec's registered office in Lebring, Styria, Austria.
- 4.2. The documentation required for the delivery must be agreed with HypTec. In any case, a delivery note for HypTec must be enclosed with each delivery.
- 4.3. In the event of a delay in delivery, HypTec is entitled to charge a contractual penalty irrespective of fault of 1% of the total order amount for each commenced week of delay in delivery, up to a maximum of 10% of the order amount, without any need to furnish proof of the losses incurred. A formal reminder from HypTec is not required. In the event of default, the Contractor shall also be liable for accidental damage. This shall be without prejudice to HypTec's right to assert any further claims for damages; in particular, the Contractor shall be liable for losses caused by delay and any losses resulting from a possible interruption of operations. Delay in delivery shall also be deemed to exist if the required delivery documents are not delivered or not delivered in full by the agreed date.
- 4.4. After setting of a grace period to no avail or if the interest ceases to exist, HypTec is also entitled to resile from the contract in question and to demand compensation in damages in lieu of performance. The foregoing is without prejudice to HypTec's possible claims for losses caused by delay.
- 4.5. Partial deliveries are permissible so long as HypTec does not expressly request a complete delivery. In such case, the Contractor waives its right to make partial deliveries and HypTec is not obliged to accept partial deliveries or partial services from the Contractor.
- 4.6. The Contractor is responsible for proper packaging and labelling. The packaging must be adapted to the product to be supplied, the known conditions and the specifications agreed with HypTec.

## **5. Duty to give notice of defects & notification of defects**

- 5.1. HypTec is not obliged to inspect the goods delivered by the Contractor and to give notice of any defects. The duties to inspect and give notice under Section 377 Austrian Business Code [UGB] are hereby explicitly waived.

## **6. Terms of payment**

- 6.1. Payment shall be made in accordance with the separately agreed payment terms. Unless other terms have been separately agreed, payment terms of 30 days with 3 % discount; 90 days net are deemed agreed. Timely payment shall be contingent upon the Contractor's having furnished contractually compliant deliverables and HypTec's receipt of a verifiable invoice. If early deliveries are accepted, the payment period shall commence no earlier than the agreed delivery date.
- 6.2. In the event of defects in the deliverables (short delivery, deliverables are delivered late or are defective), HypTec shall be entitled to withhold payment pro rata until proper performance.
- 6.3. The assignment of claims against HypTec to third parties is not permitted absent HypTec's prior written consent. HypTec is entitled to offset any claims against the Contractor.
- 6.4. Unless otherwise agreed in writing, the currency of payment is the euro.

## **7. Term of contract & Termination**

- 7.1. The contract is valid for its agreed term.
- 7.2. HypTec reserves the right to rescind from the specific contract or from all existing contracts with the Contractor in the event of serious breaches of contract. A serious breach of contract shall be deemed present, irrespective of any fault on the part of the Contractor, in particular if
- the delivery date is exceeded by more than 2 months;
  - the Contractor does not perform its main contractual obligations or does not fulfil the warranty obligations within a reasonable period of time;
  - the Contractor is no longer in compliance with the required quality management system (in accordance with the latest version of the ISO 9000 series);
  - penalised dates or the maximum penalty stipulated in the contract is exceeded;
  - the prerequisites are met for the opening of insolvency proceedings or similar proceedings over the contractor's assets or where insolvency proceedings are not opened due to a lack of assets covering costs;
  - HypTec has just cause to assume, even before the applicable delivery date, that the Contractor is unwilling or unable to perform essential contract obligations on time;
  - the Contractor persistently breaches these GTCPs or provisions of applicable law; or
  - HypTec's ordinary course of business is materially disrupted by acts or omissions of the Contractor.
- 7.3. The Contractor shall be liable for all losses suffered by HypTec as a result of such rescission of the contract (including liability for loss of profit and frustrated expenditures).

- 7.4. HypTec's statutory rights of termination are not restricted by the provisions of these GTCP.
- 7.5. When a contract comes to an end, whether due to lapse of time, rescission or for whatever reason, HypTec shall be entitled to acquire from the Contractor all machines and tools necessary for the manufacture of the contract deliverables. The price is determined on the basis of the acquisition costs (invoices) to be proven by the Contractor less wear and tear (depreciation).

## **8. Warranty**

- 8.1. The Contractor warrants that the products are free of defects and comply with the agreed specifications and the warranted properties in accordance with the product description and the data sheet as well as the recognised rules of technology, the applicable statutory and official regulations and relevant industry standards. HypTec's approval of specifications provided by the Contractor or drawings, calculations or other documents submitted by the Contractor, as well as HypTec's opinions or recommendations, shall not affect the Contractor's sole responsibility for ensuring that the delivered products are free from defects.
- 8.2. Notwithstanding Section 932 (2) Austrian General Civil Code [ABGB], decisions as to whether any defects are to be remedied by replacement of the defective deliverables or parts thereof or by undertaking remediations to the goods and services shall be vested solely in HypTec.
- 8.3. If HypTec incurs increased costs to perform its own contractual obligations as a result of the defective deliverable, the Contractor must reimburse HypTec for such increased costs.
- 8.4. If the Contractor fails to provide supplemental performance at HypTec's request within a reasonable period of time specified by HypTec, HypTec shall be entitled to resile from the contract and return the defective products at the Contractor's risk and expense or to abate the purchase price by a commensurate amount. Any claims for damages by HypTec against the Contractor shall remain unaffected by this. The setting of a deadline for supplemental performance may be dispensed with if supplemental performance is actually impossible or commercially unfeasible or the Contractor seriously and definitively refuses to perform.
- 8.5. In order to satisfy its own contractual obligations to deliver goods and services, HypTec is entitled in urgent cases to carry out necessary repairs itself or have them carried out by third parties or to procure a defect-free replacement deliverable from third parties. HypTec shall inform the Contractor of this in advance as far as possible. The Contractor is obliged to compensate HypTec for all necessary, reasonable and demonstrably incurred expenses.
- 8.6. If a defect in the products is only discovered after their resale or transfer by HypTec to third parties or after their further processing by third parties, the Contractor shall be liable for all expenses associated with the replacement or repair of the defective products, in particular testing, transport, travel, labour and material costs, irrespective of whether the Contractor is at fault and irrespective of whether they were incurred by the Contractor, HypTec or third parties. This also includes the costs of any necessary replacement or repair of products into which HypTec has incorporated defective products.
- 8.7. The warranty period is 3 years from the time of handover.

## **9. Compensation for losses**

- 9.1. The Contractor shall be liable to HypTec without limitation for all losses incurred by HypTec as a result of a culpable breach of the Contractor's contractual or statutory obligations.
- 9.2. If HypTec is legally obliged to compensate third parties for losses resulting from a breach of duty by the Contractor, the Contractor is obliged to reimburse HypTec for all costs incurred as a result of or in connection with this (including the costs of legal representation) and to indemnify and hold HypTec harmless against any claims.
- 9.3. Without prejudice to HypTec's other rights, the Contractor is obliged to indemnify HypTec and hold it harmless against claims for damages by third parties upon first request, provided that the cause of the claims lies within the Contractor's sphere of control or organisation and the Contractor itself is liable in relation to third parties. The foregoing is without prejudice to HypTec's right to assert further claims.

## **10. Third-party intellectual property rights**

- 10.1. The Contractor warrants that no third-party intellectual property rights are infringed in connection with the contracts. If claims are asserted against HypTec in connection with the delivered products due to the infringement of third-party intellectual property rights, the Contractor shall be obliged to indemnify HypTec and hold it harmless against such claims.
- 10.2. The Contractor's obligation to indemnify HypTec shall also include all necessary expenses incurred by HypTec in connection with the claim by a third party (including the costs of legal representation). HypTec shall inform the Contractor of any claims asserted by third parties.
- 10.3. If an indemnification is granted, the Contractor shall be entitled, at its own due discretion, to take the appropriate legal defence measures or to ensure that the necessary rights of use are granted. The foregoing is without prejudice to HypTec's right to assert all statutory claims, in particular claims for damages.

## **11. Offsetting, right of retention, assignment**

- 11.1. HypTec is entitled to rights of set-off and retention to the extent permitted by law. The Contractor may only offset its own claims if its counterclaims have been adjudicated by *res judicata* judgment or expressly acknowledged by HypTec in writing. The Contractor shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contract.
- 11.2. The Contractor may not transfer or delegate its obligations under a contract from HypTec to a third party (including subcontracting) absent HypTec's specific written consent. In the event of an assignment or delegation (including subcontracting) authorised by HypTec, the Contractor shall remain fully responsible for all deliverables, including warranties, guarantees and other claims, unless otherwise expressly agreed in writing with HypTec.

## **12. Final provisions**

- 12.1. Changes to the Contractor's master data must be reported to HypTec without delay.

- 12.2. The Contractor is obliged to comply with the relevant statutory provisions in connection with the Parties' contract. This applies in particular to anti-corruption and money laundering laws as well as antitrust, labour and environmental protection regulations.
- 12.3. The legal relations between HypTec and the Contractor shall be governed by the law of the Republic of Austria, excluding its conflict of law rules and the Vienna UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).
- 12.4. Jurisdiction for all legal disputes arising from or in connection with these GTCP, contracts subject to them and all contracts between HypTec and the Contractor is vested in the court with subject-matter jurisdiction in 8403 Lebring. However, HypTec shall be entitled to assert an action against the Contractor alternatively before the court having subject-matter jurisdiction at the Contractor's registered office.
- 12.5. Should any of the foregoing provisions be or become invalid, void or unenforceable, this shall not affect the validity of the remaining provisions. In such case, the invalid, void or unenforceable provision shall be interpreted, reinterpreted or replaced from the outset of its invalidity, voidness or unenforceability in such a way that the commercial objective pursued by it is achieved in the best possible way. The foregoing also applies to any gaps in the contract.