

General Procurement Conditions of SPIRIANT GmbH and its Group companies



Art. 1 General – Scope

1.1 These General Procurement Conditions (hereinafter: "GPCs") govern in principle the legal relationship between SPIRIANT GmbH or its Group companies (each company referred to hereinafter as "SPIRIANT") and its contracting partners (each company referred to hereinafter as "Supplier") in the procurement of goods, work and/or services by SPIRIANT.

1.2 Any conflicting or deviating terms and conditions shall not apply even if not rejected in a particular case. These GPCs apply only where the customer is an entrepreneur or a legal entity or a special fund under public law.

Art. 2 Delivery, default

2.1 In the event that the delivered goods deviate from the procurement contract or from the order, SPIRIANT shall be bound only if it has given its written consent to the deviation prior to delivery. This shall also apply to any part-deliveries or early deliveries. Acceptance of deliveries and services, the issuance of receipts or any payment on the part of SPIRIANT shall not, per se, be deemed to constitute consent. Acceptance of deliveries is confined to the receiving unit indicated to the Supplier or to the forwarder authorized by SPIRIANT. Acceptance of deliveries by unauthorized personnel shall in no case involve a loss of rights on the part of SPIRIANT.

2.2 Deliveries of goods shall be accompanied by delivery notes in duplicate. Handover of the goods shall be receipted by SPIRIANT (receipt for goods shipped). In the event of any collection (agreed in a departure from Art. 2.3) by a contractor commissioned by SPIRIANT, handover of the goods shall be receipted by the contractor. The Supplier shall be responsible for obtaining receipts for goods shipped.

2.3 Time and place of delivery specified in the procurement contract or the order are binding. The crucial date for adherence to a delivery term or deadline is the date of receipt of goods at SPIRIANT premises. Failing other written arrangements, deliveries shall be delivered according to DDP, see Incoterms 2010 SPIRIANT and Supplier undertakes to unload the goods on the ramp of SPIRIANT operation. This shall also apply to any specimens.

2.4 If the contractual service consists in work, adherence to the delivery time shall depend on the acceptance or acceptability of the work.

2.5 The Supplier undertakes to notify SPIRIANT in writing without delay, and orally in advance, if circumstances have occurred or are foreseeable that point to possible non-adherence to the agreed delivery time.

2.6 In the event of default in delivery, SPIRIANT shall be entitled to claim all rights offered by the provisions of statute. Moreover, in the event that the Supplier is in default, SPIRIANT shall be entitled to demand a contractual penalty amounting to 0.3% of the value of the delayed delivery or service per calendar day, though max. 5% of the total order value. The Supplier is free to demonstrate that no or less outlays have been incurred. The contractual penalty shall count toward the total amount of any claim for loss caused by the delay. SPIRIANT reserves the right to claim the contractual penalty pending final pay-

ment. For the rest, this shall not affect any further-going claims and rights.

2.7 Delivery notes shall contain the following particulars: number of the delivery note, quantity delivered, agreed article designation and number, place of performance, contract and order number and date. In the case of incomplete data, the arrangement under Art. 5.2, sent. 4, shall apply by analogy.

2.8 In the case of any deliveries from abroad, an additional copy of the delivery note and, where necessary, the appropriate import records shall be attached to the delivery.

2.9 At the demand of SPIRIANT, the Supplier undertakes to include the requested documents, a certificate of origin, manufacturer and/ or preference certification, with the shipment free of charge.

Art. 3 Prices and offset

3.1 The prices specified in the various orders or contracts are, in principle, without value-added tax (VAT) but, failing other express contractual arrangements between the parties, include the costs of transport and packaging. They are fixed prices and rule out any subsequent demands on the part of the Supplier.

3.2 The Supplier affirms that the calculation of the agreed prices and any transport costs, wherever these are to be borne by SPIRIANT in exceptional cases, is not based on any taxes or levies that may be remitted for whatever legal reason. Should any such taxes or levies form the basis for the Supplier's pricing, the price shall be deemed to be reduced by such amounts. If any or all of these levies are remitted or reimbursed to the Supplier following conclusion of a procurement contract, it shall reimburse SPIRIANT in the full amount.

3.3 The Supplier may only offset such claims of SPIRIANT as are undisputed or final. No claims of the Supplier against SPIRIANT may be assigned to third parties without the prior written consent of SPIRIANT. Payments may be made only to the Supplier.

Art. 4 Payment terms

Failing other written agreements, payments shall be made within thirty (30) calendar days. These payment periods commence upon complete delivery or acceptance and receipt of a due and proper invoice.

Art. 5 Invoices

5.1 The Supplier's invoices for goods shall be drawn up only on the basis of the receipted delivery note. A separate invoice shall be produced in respect of each delivery at each place of delivery or each collection agreed (in a departure from Art. 3.1) by SPIRIANT or a contractor commissioned by SPIRIANT.

5.2 Invoices drawn up by the Supplier shall contain the same data as the receipted delivery note. The contractually agreed price shall be stated in the invoice. If an invoice contains deviating or incomplete particulars, SPIRIANT may, at its discretion, correct or supplement any incorrect or missing particulars or else return it to the Supplier for verification. At any event, the payment term pursuant to Art. 4 shall

not apply until correction or until SPIRIANT has received the invoice verified by the Supplier.

5.3 The parties may contractually agree on settlement via the Evaluated Receipt Settlement (ERS) procedure. In such case, the Supplier provides its service on the basis of the procurement contract or order by SPIRIANT without producing an invoice. Within the scope of automated incoming-goods inspection, SPIRIANT makes a credit entry in favour of the Supplier on the basis of the particulars contained in the delivery note. SPIRIANT transmits to the Supplier a record of the credit entry in writing or by email. The Supplier undertakes to notify SPIRIANT of any deviations of the credited amount and any associated excess payments or shortfalls without delay and to make up any differences.

5.4 The Supplier's invoices for individual services shall be drawn up within thirty (30) calendar days of performance of the service. Recurrent services performed by the Supplier shall be invoiced on a monthly basis, failing other express contractual arrangements.

Art. 6 Acceptance, defects

6.1 The contractual service shall be accepted after an incoming-goods inspection performed by SPIRIANT upon receipt or (wherever contractually agreed in a departure from Art. 2.1) after an agent commissioned by SPIRIANT has collected the goods at the agreed place of performance.

6.2 SPIRIANT shall examine deliveries within fourteen (14) calendar days of acceptance as to obvious defects. SPIRIANT shall promptly notify the Supplier in writing of any defects as soon as they are established in the course of due and proper business operations.

Art. 7 Passage of risk and title

7.1 The risk shall pass to SPIRIANT, in the case of work and services, with their acceptance and, in the case of goods deliveries, upon their receipt at the receiving unit named by SPIRIANT.

7.2 Upon delivery (acceptance) or handover of the ordered goods or work, SPIRIANT shall be given direct title thereto.

Art. 8 Warranty

SPIRIANT shall be entitled to the full statutory warranty claims subject to the following stipulations:

8.1 The warranty period shall commence with the passage of risk. If deliveries by the Supplier concern component supplies of SPIRIANT to third parties, the warranty period shall commence upon their delivery to the third party by SPIRIANT.

8.2 Wherever the warranty arrangements contain options between different forms of warranty claims, these options shall be due to SPIRIANT.

Art. 9 Liability

9.1 In respect of its deliveries and services, the Supplier shall adhere to the state of the art, the variously applicable safety rules and the relevant accident-prevention, environmental and industrial-safety rules. Any permits and approvals necessary for due and proper deliveries or services shall be obtained or updated by the Supplier at its expense and in good time. If this provision is not heeded, the order shall be deemed to have been improperly discharged.

9.2 Any infringement by the Supplier of the contractual duties shall entitle SPIRIANT to rescind from the contract. Any recurrent infringements shall entitle SPIRIANT to terminate the contract without giving notice. In addition, SPIRIANT shall be entitled to assert claims to compensation.

9.3 The Supplier shall exempt SPIRIANT from any third-party claims to compensation under product liability wherever the cause lies in its sphere of influence and organization, and itself is liable in its external relations.

9.4 In addition, the Supplier shall be liable for reimbursement of any outlays resulting from or in connection with any recall scheme carried out by SPIRIANT. SPIRIANT undertakes to notify the Supplier – wherever this is possible and can reasonably be expected – of the content and scope of any recall measures to be taken and to give it an opportunity to submit an opinion.

9.5 In the event that recourse in connection with guarantees or advertising statements made by the Supplier is claimed to SPIRIANT by third party, the Supplier undertakes to exempt SPIRIANT from any alleged and existing claims. The Supplier's exemption duty refers to any outlays and costs incurred by SPIRIANT arising from or in connection with any recourse had by third parties. This shall also include any lawyer's costs.

9.6 The Supplier's liability pursuant to the provisions of statute shall not be affected.

Art. 10 Force Majeure

10.1 Force Majeure is defined to include (but without limitation to) inability to perform as a result of any cause beyond the reasonable control of that party including acts of God, fire, flood, storm, earthquake, power failure, terror acts, war, riots or any act of any government or public authority. In the event Supplier is prevented or delayed from or in performing its duties or obligations by Force Majeure, SPIRIANT may engage a third party to provide the affected services or products until such time as the Supplier, upon giving notice in writing, is able once again to perform in accordance with the contract.

10.2 If any Force Majeure preventing either party from performing its obligations under the contract lasts for a continuous period of more than ninety (90) calendar days, then either party may terminate the contract by giving thirty (30) calendar days' notice in writing to the other party without penalty, liability or further obligation.

Art. 11 Quality agreement

Should any product investigation made by SPIRIANT establish that the quality level pursuant to the quality agreement is not reached, SPIRIANT reserves a special right of termination. The same shall apply where the Supplier's personnel, building and equipment hygiene is insufficient.

Art. 12 Ethical, hygienic security obligations

12.1 The Supplier represents, warrants and undertakes, as appropriate, that

(a) this Agreement and the relationship created hereby and the Supplier's activities hereunder do not and will not violate any laws related to bribery and/or corruption, including but not limited to the OECD convention on combating bribery of foreign public officials in international business transactions and all related and implementing legislation or put SPIRIANT in breach of any such laws;

(b) 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 the terms of this contract;

(c) neither the Supplier nor, to the Supplier's knowledge, any other person, including but not limited to the Supplier's employees, subcontractors or agents, have made any loan, gift, donation or other payment of anything of value, directly or indirectly, whether in cash or in kind, to or for the benefit of any public official or any other person to obtain any improper advantage or will make such offers in the future, whereas the aforementioned term of a public official includes officer or employee of a government agency, department, instrumentality, government-owned company, or public international organization, political candidate, political party or official thereof, or anyone acting in an official capacity for any of the foregoing; and

(d) Supplier will notify SPIRIANT of any change of ownership and of any change of information provided in the Supplier Questionnaire within four weeks.

Without prejudice to any other rights SPIRIANT may have, SPIRIANT shall be entitled to terminate without previous notice fully or partially this contract and any attachment as well as any other contractual relationship the parties may have if SPIRIANT gains knowledge or has reason to suspect that the Supplier is in breach of his obligations according to this Art. 12.1 and/or that the information provided in the Supplier-Questionnaire is not correct. SPIRIANT may conduct an anti-corruption audit of the Supplier's books and records if necessary and appropriate to ensure the Supplier complies with its obligations under this Art. 12.1.

12.2 Inter alia, SPIRIANT companies are food-producing enterprises. The Supplier undertakes to adhere on demand to the appropriate regulations and rules of hygiene in any hygienically sensitive production areas.

12.3 The premises of SPIRIANT are located in areas where aviation security concerns are relevant. The Supplier commits to comply with all relevant legal and local aviation security and airport regulations when delivering.

12.4 The following clause only applies to Suppliers of services that provide their services in Germany: the Supplier formally insures to grant his employees the labour conditions including the remuneration set in the labour contract which is defined in the German employee assignment law (Arbeitnehmerentsendegesetz). The Supplier insures to grant his employees at least the minimum wage per working hour defined in the German minimum wage law (Mindestlohngesetz) provided that the requirements for the exemption are not fulfilled and to comply with other statutory requirements regarding minimum wages. The Supplier formally insures to require from any hired subcontractor, conferrer or conferrer hired by a subcontractor to grant its employees at least the same labour conditions including the remuneration set in the labour contract that they also grant or promise to grant their employees. However, the hiring of a third-party by a subcontractor or a conferrer requires the former written consent of SPIRIANT. The Supplier insures to submit a monthly proof to SPIRIANT from which it becomes apparent that his employees as well as the employees of its hired subcontractors or conferrer are paid a minimum wage per working hour. Additionally, the Supplier allows SPIRIANT to get an insight into the anonymized list of remuneration and salary. The Supplier formally insures to be liable to the full extent for possible claims of damages by his employees, employees of his subcontractors or employees of his conferrer or conferrers hired by his subcontractors against SPIRIANT due to failure to pay the minimum wage according to the German minimum wage law (Mindestlohngesetz) and to keep SPIRIANT free from any damage SPIRIANT has the right to terminate this contract with a period of notice of fourteen (14) calendar days before the end of the month if the Supplier fails to comply with his obligation to produce supporting documents.

Art. 13 Corporate Social Responsibility

13.1 In terms of a major contractual obligation Supplier undertakes to comply with the 10 principles of UN Global Compact and 4 fundamental principles of International Labour Organisation (ILO). SPIRIANT expect that the Supplier demands such compliance also from his suppliers.

13.2 In the event that SPIRIANT has reasonable suspicion that the Supplier (including its subcontractors) is in breach of its obligations according to this Article SPIRIANT shall have the right, in accordance with the following provisions, to conduct an audit within the Supplier's organization to the extent necessary to determine whether a breach exists.

Except for cases of justified urgency, SPIRIANT shall announce such audit with a fourteen (14) calendar days prior written notice.

SPIRIANT, or a third party engaged by SPIRIANT which is bound to confidentiality, may conduct the audit during Supplier's ordinary business hours.

SPIRIANT shall take reasonable care that its activities during the audit at Supplier's premises will interfere to a minimum with Supplier's regular business operations. Supplier's company and trade secrets as well as the protection of personal data of persons affected by the audit will be maintained.

13.3 Without prejudice to any other rights SPIRIANT may have, SPIRIANT shall be entitled to terminate this Agreement as well as any other contractual relationship the Parties may have, if SPIRIANT gains

knowledge or has reason to suspect that Supplier is in breach of his obligations according to Art. 13.1 and fails to remedy such breach within thirty (30) calendar days after the acknowledgement of SPIRIANT.

Art. 14 Secrecy, data protection

14.1 The Supplier shall treat in strict confidence the contractual relationship with SPIRIANT, any personal data and any records handed over to it in this connection and any information (whether in written, oral or other form) of which it becomes aware, even if they are not specifically identified as such. The Supplier shall be liable for any damage/loss incurred by SPIRIANT due to any breach of this duty.

14.2 Such information and data may be disclosed to third parties only with the express written consent of SPIRIANT. Any advertising of the business relation with SPIRIANT shall require the latter's written consent.

14.3 Heed must be paid to statutory and company data-protection rules. Wherever personal data are processed or used under an order, the parties shall conclude a data-protection agreement pursuant to the provisions of Germany's Federal Data Protection Act (BDSG).

Art. 15 Intellectual Property

15.1 Supplier represents and warrants that as of the delivery of the Products to SPIRIANT, and covenants that, continuously thereafter, the Products and any parts thereof and purchase, use, sale, offer to sell and/or importing of such Products and any parts thereof, will not infringe any copyrights, design patents, utility patents, trademarks or trade secrets of any third party. The Supplier shall undertake to exempt SPIRIANT from any claims of third parties arising from or in connection with the assertion of such a right.

15.2 All intellectual property rights or other neighbouring rights of SPIRIANT shall remain with SPIRIANT.

Art. 16 Use and exploitation rights

16.1 SPIRIANT shall retain title to any plans, drawings and other records made available to the Supplier. They shall be returned without delay upon completion of the order.

16.2 Such information and materials will be used by Supplier solely to the extent necessary for Supplier to fulfil its obligations to SPIRIANT under this Agreement and to produce and deliver the Products. Supplier will not copy, sell, lend or otherwise dispose of or use the information or materials without the prior written consent of SPIRIANT.

Art. 17 Other provisions

17.1 The contractual relationship between the Supplier and SPIRIANT and any claims resulting therefrom are exclusively subject to German law. The UN Convention on Contracts for the International Sale of Goods dated April 11, 1980 is ousted.

17.2 The courts at Frankfurt am Main shall have exclusive jurisdiction in any disputes, including the special procedure based on docu-

ments (trial by record) and bills of exchange, arising from or in connection with the contractual relationship, its emergence, legal effect or termination.

17.3 Failing other arrangements set forth in the procurement contract or the order, the place of performance is the registered office of SPIRIANT.

17.4 The contractual language in the territory of German-speaking countries in Europe is German, outside this territory English. To the extent that the contracting parties also make use of the national language pertaining at the registered office of SPIRIANT outside the territory of the German-language countries in Europe, the English wording shall have priority.

17.5 Failing other arrangements, any declarations of SPIRIANT shall be in writing to be effective. Neither party may rely on any actual exercise deviating from the Agreement, until such time as both contracting parties have confirmed such deviation in writing.

17.6 Even if the contracting parties agree that one or more provisions of these GPCs be replaced by special covenants, this shall not affect the remaining provisions, which shall continue to apply.

17.7 Should any provision of this agreement be or become ineffective, this shall not affect the validity of the remaining provisions. Failing other arrangements under optional law, any invalid term shall be replaced with a valid provision reflecting the economic purpose of the ineffective provision, with heed paid to its legality.