



# **GENERAL TERMS AND CONDITIONS OF PURCHASE**

## **OF BP EUROPA SE**

### **FOR DELIVERIES AND SERVICES**

Version: 6. September 2018

#### **1. Scope of Application**

1.1 These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") are part of all purchase orders, assignments and contracts, including all framework contracts such as, for example, bulk purchase contracts (*Mengenkontrakt*) or value contracts (*Wertkontrakt*), (hereinafter collectively and individually referred to as "PO"), which

a) BP Europa SE or

b) an entity affiliated with BP Europa SE within the meaning of Sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*)

(each of the entities above hereinafter individually referred to as "BP") furnishes or concludes from Germany in connection with the delivery of products and goods (hereinafter collectively referred to as "goods") and / or the provision of (other) services (*Leistungen*) for itself or for third parties (in particular for Ruhr Oel GmbH, Gelsenkirchen), provided that these GTCP are incorporated into the relevant PO (by reference or otherwise).

1.2 The GTCP – as amended at the time – shall also apply to any request for proposal or quotation (hereinafter collectively referred to as "Proposals") as well as to any future business with the contractor (hereinafter referred to as "Contractor").

1.3 Conflicting, additional or otherwise deviating terms and conditions put forward by the Contractor are hereby rejected. They will apply only if and to the extent BP has declared expressly and in writing that it agrees to them.

These GTCP shall apply even if BP, with knowledge of terms and conditions of the Contractor which conflict with or otherwise deviate (e.g. through additional provisions) from the GTCP, accepts the delivery and/or service without reservation.

#### **2. Elements of a PO and their Order of Precedence**

The PO shall be constituted by the following elements and these shall be read and construed as mutually complementary, but in the event that there is any conflict between them regarding interpretation or construction they shall be referred to in the following order of precedence:

2.1 the purchase order, assignment or contract document itself (including its annexes except for such annexes listed separately under clauses 2.2 – 2.4 below);

2.2 the minutes of negotiations (if existent and referenced in the purchase order, assignment or contract document);

2.3 these GTCP;

2.4 any special and general technical conditions and regulations relating to the object of the PO (e.g. DIN standards).

#### **3. Requests and POs, Proposals by the Contractor, Conclusion of Contract, Form Requirements, further Correspondence**

3.1 If BP requests a Proposal from the Contractor, then such request shall be binding for the Contractor's Proposal. The Contractor shall explicitly indicate any deviations of its Proposal from BP's request. The request is non-binding on, and may be altered by, BP. Proposals, drafts, samples and models from the Contractor are provided to BP free of charge and do not constitute any obligation on the part of BP. Unless otherwise agreed, no remuneration or compensation is payable for site visits or the preparation of Proposals, projects etc.

3.2 It is incumbent upon the Contractor to inform itself of the prevailing conditions on the site prior to the submission of its Proposal and prior to the beginning of work. For deliveries and services, the net price, exclusive of value added tax, shall be quoted.

3.3 Any PO furnished or agreed upon verbally or by telephone as well as any subsequent amendment or change of a PO, including these GTCP or other elements of the PO, agreed upon verbally or by telephone has to be confirmed by the parties in text form (*Textform*) for the purposes of proof and proper documentation. Any additional form requirements constituted by the PO, including these GTCP, or law remain unaffected.

3.4 If the Contractor has any concern regarding the specifications of goods or services as provided for in BP's request or the PO, then the Contractor shall prior to the conclusion of the contract notify BP of its concern in text form and wait for BP's decision whether such specifications shall remain unchanged in spite of such concern. This shall in particular (without limitation) apply to any concern regarding (i) the suitability of goods and/or services, thus specified, for the use to which the goods shall be put according to the request or PO, or for their customary use, and/or (ii) the conformity of the specifications with requirements provided for by law, administrative bodies or employers' liability insurance associations (*Berufsgenossenschaften*) or generally recognised engineering rules and standards. If the Contractor does not notify BP of such concerns in time or does not wait for BP's decision, then the Contractor may not plead vis-à-vis BP that the specifications provided by BP were incorrect.



3.5 The Contractor shall quote the number and date of BP's request for Proposal or, as the case may be, of BP's purchase order in all correspondence with BP including (but not limited to) invoices, certificates of delivery and/or performance (hereinafter collectively referred to as "**certificate of performance**"), e.g. delivery notes, and dispatch notes.

#### **4. Remuneration, Prices**

4.1 The agreed prices are fixed for the term of the PO, and are understood to be subject to the applicable value added tax.

4.2 If the remuneration agreed is not a one-off fixed price (but e.g. to be determined on the basis of material quantity (*Aufmaß*), agreed hourly or daily rates or other unit prices (*Einheitssätzen*)), then the Contractor shall prepare and provide to BP detailed written certificates of performance in a format to be agreed in advance with BP and setting out the price calculation in a transparent and auditable manner. Unless agreed otherwise, a certificate of performance regarding services provided on the basis of a time-based pay, e.g. hourly or daily rates, has to evidence the performance by way of a properly structured breakdown of the dates of performance, of the type of work performed and of the time spent for such work on each date as well as of the aggregate time spent. Unless specified otherwise in the PO, certificates of performance and corresponding invoices shall be submitted monthly.

4.3 The prices cover all costs and expenditures for the delivery to the agreed destination (e.g. address, plant, building, filling station, other place of delivery / of provision of services) including costs and expenditures for transportation and import duties ("DDP" – Delivered Duty Paid – pursuant to the ICC-Incoterms 2010); the Contractor shall submit to BP an invoice with German VAT. In case the Contractor does not have a VAT registration in Germany "DAP agreed destination" shall be deemed to be agreed. In such case BP shall transfer the goods into free circulation and pay the relevant import VAT. The Contractor shall submit to BP an invoice without VAT and refer to the delivery condition DAP.

4.4 Additional goods and/or services beyond the scope of the PO will be paid only if they have been agreed in writing by BP. Their unit prices (*Einheitssätze*) must correspond to the pricing in the PO.

#### **5. International Trade Regulations**

5.1 The Contractor shall ensure that it and – subject to the provisions in clause 13 below - its sub-contractors comply with all applicable export control, trade embargo and other foreign trade control laws, rules and regulations, including but not limited to the European Dual-Use Export Control Regulation (EC) 428/2009, the United States Export Administration Regulations, the United States International Traffic in Arms Regulations and similar laws of the territory applicable to the PO (together "**Trade Restrictions**"), relating to the performance of its obligations hereunder. Failure by the Contractor and its sub-contractors to comply with applicable Trade Restrictions shall constitute a material breach of the PO. The Contractor shall indemnify and hold harmless BP against all claims relating to any failure by it to comply with Trade Restrictions.

5.2 Except as may be otherwise expressly stated in the PO or agreed in writing by the parties, the Contractor shall be solely responsible for applying for and obtaining appropriate governmental authorizations for the export and import of any equipment, software, technology goods or services to or for the benefit of BP. Upon reasonable request, BP shall provide the Contractor, at no cost to BP, with reasonable assistance in determining the application of applicable Trade Restrictions and in applying for necessary authorizations and completing required formalities. BP assumes no responsibility or liability for the Contractor's failure to: properly determine applicable Trade Restrictions, obtain necessary authorizations or comply with required formalities.

5.3 The Contractor represents and warrants that it, its affiliates, and its directors, officers, key employees or agents are not subject to restriction under any national, regional or multilateral trade or financial sanctions under applicable trade control laws and regulations.

5.4 The provisions of this clause 5 shall survive the expiration or termination of a PO for any reason.

#### **6. Provision, Review, Inspection and Alteration of the Delivery and/or Service.**

6.1 In the provision of the goods and/or services, the Contractor may employ only such skilled personnel (*Fachkräfte*) as possess the necessary qualifications and appropriate professional experience (hereinafter referred to as "**Competencies**"). These Competencies shall be demonstrated on BP's request in the form of educational attainment, certificates or documentation of professional experience.

6.2 BP retains the right to verify the existence of the Competencies through appropriate inspections at the Contractor's or BP's premises.

6.3 In cases where there is reason to doubt the existence of the Competencies in employees and/or sub-contractors deployed at BP's premises by the Contractor, BP reserves the right to request that the Contractor removes the employees and/or sub-contractors in question from the work and replaces them with qualified employees and/or sub-contractors, all at the Contractor's expense.

6.4 Should the Contractor, during the provision of the contractual delivery and/or service, realize that changes or improvements of the content and/or extent of the delivery and/or service appear necessary or appropriate, then the Contractor shall immediately notify BP of this in writing, stating the possible changes in costs, and must obtain a decision as to whether the PO should be continued in an altered or improved form. BP shall be obliged to take a decision on this without undue delay.

6.5 BP has the right to review and inspect, or to have a third party review and inspect the delivery and/or service which the Contractor is to provide, or any portions thereof, at any time. The Contractor shall advise BP, within an appropriate period, where and when such a review and inspection of the goods and/or service can take place. The exercise of such review and inspection right by BP shall not create or grant rights of / to the Contractor; such review and



inspection shall in particular (without limitation) not be deemed to constitute an acceptance of the delivery and/or service by BP.

6.6 The Contractor shall put BP, or, as the case may be, the third party retained by BP for the review, in the position to undertake the review and inspection without limitations, and must make the appropriate facilities and assistance available to BP or, as the case may be, the third party retained by BP.

6.7 BP shall be entitled to request changes in the deliveries and/or services agreed upon with the Contractor. Should such a change have an impact on contractual provisions, for example with regard to payment or completion deadlines, the Contractor will notify BP of this immediately. The parties will thereupon agree at least in text form any adjustment to the PO required by the change, taking account of increased or reduced costs arising from this change.

## **7. Work and Product Safety, Compliance with Laws and Administrative Provisions**

7.1 The Contractor shall be responsible for the compliance (including by all sub-contractors it deploys), with all relevant labour protection and accident prevention regulations (*Arbeitsschutz- und Unfallverhütungsvorschriften*), and BP's safety rules, which the Contractor shall familiarise itself with independently. In case of serious violations, BP has the right to terminate the PO without notice.

7.2 The Contractor warrants that all goods delivered or manufactured as well as all other services provided by it

a) meet all relevant legal and administrative regulations, generally recognised engineering rules and standards, labour protection and accident prevention regulations and regulations on technical work equipment;

b) are supplied with all necessary safety devices, identification labelling and user instructions; and

c) are so constituted that users or third parties are protected from all types of risks associated with the intended use, and in particular that any associated risks of accidents and occupational diseases are eliminated.

## **8. Delivery Deadlines, Delayed Delivery**

8.1 The deadlines (dates or periods) for the delivery of goods and/or provision of services, including intermediate deadlines, specified in the PO or otherwise agreed are binding.

8.2 If the Contractor realizes that it will not be possible to comply with a deadline specified in the PO or otherwise agreed for any reason, it shall inform BP of this immediately in writing, stating the reasons for the delay and the anticipated duration of the delay.

8.3 The rights of BP resulting from a failure of the Contractor to meet a delivery and/or service deadline specified in the PO or otherwise agreed shall be determined in accordance with German statutory law, unless otherwise provided for by these GTCs.

8.4 The unconditional settlement of an invoice by BP shall neither exclude nor restrict BP's rights resulting from a failure to meet a delivery and/or service deadline specified in the PO or otherwise agreed nor BP's rights from an otherwise delayed delivery; this shall in particular (without limitation) apply to compensation claims due to the Contractor being in default (*Verzug*).

8.5 The Contractor can only claim that necessary documents or other advance deliverables have not been provided by BP if the Contractor has sent a written reminder regarding the provision of the documents or other advance deliverables specifying an adequate grace period and this grace period has expired without result, for reasons not attributable to the Contractor.

8.6 If a delivery is made by the Contractor earlier than agreed, BP reserves the right to return the delivery at the cost of the Contractor. If the early delivery is not returned, the goods shall be stored by BP until the agreed delivery time at the cost and risk of the Contractor. BP reserves the right to make payments at the initially agreed due date even though delivery occurs early.

## **9. Delivery, Packaging, Place of Performance, Certificate of Delivery and Performance (e.g. delivery notes)**

9.1 The goods are to be packaged in such way that damage in transit is avoided and environmental protection aspects are taken into consideration. Where reusable, invoiced packaging is used, it shall be credited at its full invoice value upon return. The credit note must always be submitted in a single copy, indicating the invoice on which the packaging had been charged. Otherwise, all packaging material shall remain with BP for disposal.

9.2 When delivering goods and/or providing services involving hazardous materials pursuant to clause 14.1 or products pursuant to clause 14.2, then the packaging provided or used has to identify the following:

Trade name/name of material, name and complete address including telephone number of the Contractor, pictogram or symbol for the hazard, hazard and safety instructions (risk and safety warnings / statements; or hazard and precaution warnings / statements).

9.3 Where it has been agreed that certificates on the testing of materials are to be provided, these certificates form a fundamental part of the delivery and are to be included with the delivery.

9.4 BP is not responsible for deliveries that cannot be carried out due to non-observance of the above regulations. Upon acceptance, the goods shall be stored at the cost and risk of the Contractor. BP has the right to check the content and condition of such deliveries.

9.5 The Contractor shall bear any costs arising from misdirection of deliveries if it is responsible for transportation or is otherwise responsible for the misdirection of the delivery.



- 9.6 The Contractor shall only make partial deliveries of goods and services if BP has agreed to this at least in text form. In such cases, the Contractor must state on the delivery note that it is a partial delivery and must specify the quantity remaining for delivery.
- 9.7 BP will only pay for additional / excess deliveries if they are used by BP, otherwise the additional / excess goods will be stored by BP for a maximum period of eight (8) weeks at the risk and cost of the Contractor. After this, BP is entitled to dispose of these goods at the cost of the Contractor.
- 9.8 The place of performance for a delivery or for providing a service shall be the destination (e.g. address, plant, building, filling station, other place of delivery / provision of services) specified in the PO or otherwise agreed.
- 9.9 The Contractor shall provide adequate and auditable certificates of performance in writing for all deliveries made and services provided to BP. Each PO shall have a separate certificate of performance document. In respect of deliveries of goods, the Contractor shall provide a uniquely numbered delivery note as certificate of performance. Each certificate of performance document must show the date and number of the purchase order to which it relates. It has to correspond to the respective purchase order, both in terms of content and structure; it is in particular required that each position in the certificate of performance document can be clearly attributed to the corresponding purchase order position (clear reference of the delivery or service description to the individual purchase order position). The certificate of performance document must exactly describe the type and scope (e.g. amount, duration) of the delivery and/or other service as well as the date and the place of each delivery and/or provision of service. In respect of deliveries and services that are not made / provided at a fixed package price, certificate of performance must also meet the further requirements set out in clause 4.2 above.
- 9.10 A certificate of performance which is not issued properly in accordance with the provisions of these GTCP is deemed to have not been issued at all. BP may withhold payment regarding the goods and services intended to be evidenced by such improper certificate of performance until proper certificates of performance for such goods and services have been issued. Further requirements for the payment claim becoming due and enforceable (*durchsetzbar*) remain unaffected.

#### **10. Passing of Risk and Ownership, Confirmation of Acceptance**

- 10.1 The risk of accidental loss of, or damage to, the goods remains with the Contractor until receipt of the goods conforming with the PO at the location specified in the PO or otherwise agreed.
- In case of deliveries requiring installation or assembly, the passing of risk for accidental loss or damage as well as with other performance aspects passes upon acceptance in writing of BP.
- 10.2 Without prejudice to BP's rights of rejection, title to and ownership of any goods (and materials in the case of the supply of services) shall pass to BP on delivery. The delivery of the goods or materials shall not be subject to any retention of title by the Contractor. If BP effects the payment for the goods and/or materials prior to their delivery, then title to, and ownership of, the goods and/or materials shall pass to BP upon such payment being made.
- 10.3 If an acceptance of the delivery and/or service is required by law or by the PO, the Contractor shall apply for such acceptance to BP in writing. A written certificate of acceptance (*Abnahmeprotokoll*) shall be created and signed by the parties. A signed certificate of performance does not replace the acceptance. Should partial service be agreed upon, a separate acceptance will be made for each part of the service.

#### **11. Invoicing, Due Dates**

- 11.1 The original of the invoices are to be sent to the invoicing address specified in the PO and – unless otherwise agreed – only following the successful delivery of goods or performance of services. Each PO shall have a separate invoice. Unless otherwise expressly agreed, original invoices must not be attached to the goods delivery.
- 11.2 Invoices must show the number and date of the PO for which they are issued. They have to correspond to the respective order, both in terms of content and structure, it is in particular required that each invoice position can be clearly attributed to the corresponding purchase order position (clear reference of each invoice position to the purchase order position). Invoices must not contain any items other than those contained in the purchase order.
- 11.3 Furthermore, all invoices must comply with any applicable legal requirements. In particular, invoices must separately show value-added tax at the statutory rate applicable at the time and contain any information and comply with any other requirements that arise under the laws applicable at the time (presently in particular (without limitation) sections 14 and 14a of the German Value Added Tax Act (*Umsatzsteuergesetz*)), EU directives as well as administrative directives regarding the claiming of input tax relief.
- 11.4 Invoices for partial deliveries and/or partial performance must be designated as partial invoices. Final invoices must be designated as such; the same applies to partial final invoices.
- 11.5 Invoices that are not issued properly in accordance with the provisions of the GTCP are deemed to have not been issued at all. BP may withhold payment regarding the goods and services billed with such improper invoice until a proper invoice for such goods and services has been issued. Further requirements for the payment claim becoming due and enforceable (*durchsetzbar*) remain unaffected.
- 11.6 Unless stated otherwise in the PO, payment of the Contractor's invoice will become due within
- a) 21 days following receipt of the invoice with a cash discount of 3%, or
  - b) within 30 days after receipt of the invoice net,
- provided (i) the invoice satisfies the requirements of clauses 11.1 through 11.4 above, and (ii) the delivery has been received as stipulated at its destination or the service has been performed as stipulated.



- 11.7 If early deliveries are accepted, the due date for payment is based on the original delivery deadline.
- 11.8 If the invoiced goods arrive at a date later than that of the invoice, the goods receipt date is considered to be the invoice date.
- 12. Business Policy (“Code of Conduct”) / Business and Human Rights / Bribery, Corruption and Money Laundering**
- 12.1 The Contractor acknowledges the principles of BP’s business policy set out in BP’s “Code of Conduct” and undertakes to adhere to, and act consistently with, these principles in connection with the consummation and performance of the PO. The Contractor shall submit its sub-contractors to these duties in the same way. BP’s Code of Conduct can be found at:
- <http://www.bp.com/codeofconduct>
- 12.2 The Contractor confirms that it has carefully reviewed the *BP Business and Human Rights Policy* which is available at:
- <https://www.bp.com/content/dam/bp/pdf/sustainability/group-reports/BPHumanRightspolicy.pdf>
- In connection with the Contractor’s performance of the PO and consistent with the policy, the Contractor shall conduct its business in a manner that respects the rights and dignity of all people and internationally recognised human rights, including without limitation:
- a) not employing, engaging or otherwise using forced labour, trafficked labour or child labour; nor engaging in or condoning abusive or inhumane treatment of workers;
- b) providing equal opportunities, avoiding discrimination and respecting freedom of association of workers, in each case within the relevant national legal framework; and
- c) mitigating or avoiding adverse impacts to communities arising from the Contractor’s activities to the extent practicable.
- 12.3 The Contractor acknowledges that BP has a zero tolerance policy towards bribery, corruption and money laundering. The Contractor confirms and agrees that – in relation to the PO – it will comply with anti-bribery and corruption and anti-money laundering laws and regulations applicable to both the Contractor and BP. In this course the Contractor will procure that its employees and service providers including, but not limited to, its sub-contractors, agents and other intermediaries will not, offer, give, promise to give or authorise the giving to any person whatsoever including but not limited to private individuals, commercial organisations, public officials or persons entrusted with special public service functions within the meaning of Art. 11 sec. 2 and 4 German Criminal Act (*Strafgesetzbuch*) (“**Public Officials**”) or any political party, official of a political party, or candidate for public office (together “**Beneficiary**”), or solicit, accept or agree to accept from any Beneficiary, either directly or indirectly, anything of value including, without limitation, payments including so-called Facilitation Payments, gifts or entertainment (together “**Advantages**”), which might be considered as improper practice or bribery in order to obtain, influence, induce or reward official or private actions or decisions or securing any improper Advantages in connection with this Contract (the “**Anti-Corruption Obligation**”). Facilitation Payments shall include infrequent payments/benefits in cash or kind made to a Public Official to facilitate routine, non-discretionary governmental actions that: (i) the Public Official ordinarily performs; and (ii) one is entitled to under the laws of the relevant country.
- 12.4 The Contractor shall: (a) immediately report in writing to BP details of any breach of the Anti-Corruption Obligation in connection with the contract; (b) ensure and monitor compliance with the Anti-Corruption Obligation; (c) in case of any breach of the Anti-Corruption Obligation permit BP to inspect, audit and make copies of any books and records of the Contractor relating to this Contract and the Contractor’s compliance with the Anti-Corruption Obligation through an independent and professional auditor who is obliged to observe professional discretion (e.g. certified accountant) appointed by the Contractor. In case the result of the audit performed is that the Contractor has breached Anti-Corruption Obligations, BP shall be entitled to reclaim the costs of the audit possibly incurred by BP.
- 12.5 Without prejudice to any other rights BP may have, BP shall be entitled to terminate this Contract or suspend any services/supply or payments with immediate effect if BP reasonably believes in good faith that the Contractor has breached in any material respect any of the requirements set out in this clause 12.
- 13. Use of Contractor and Sub-Contractor Personnel**
- 13.1 The use of sub-contractors and/or temporary workers (*Leiharbeitnehmer*) in accordance with the Law on Temporary Employment (*Arbeitnehmerüberlassungsgesetz*) requires BP’s prior written consent. The Contractor shall request the relevant form from the BP representative identified within the PO. The Contractor must subject the sub-contractors to all obligations to which itself is bound in relation to BP and shall ensure that they comply with these obligations.
- 13.2 The Contractor shall oblige the sub-contractor, in a sub-contractor agreement, to provide the Contractor on demand all required certificates of latest date from the relevant tax authorities, social insurance carrier and professional association, as well as – if necessary – labour permits, to be presented to BP. Moreover, the Contractor shall ensure that the employees of the sub-contractor, in case of their deployment into the operations and business locations of BP, identify themselves to BP’s works security department (plant security, gate security guards, etc.) as sub-contractors of the Contractor.
- 13.3 The Contractor shall ensure and prove to BP upon request that, as a minimum but not limited to,
- a) the Contractor’s and its sub-contractor’s personnel at BP’s premises are legally employed in accordance with German tax and social security regulations;



- b) the Contractor fully fulfills its obligations for employer payments in relation to tax authorities and social insurance institutions,
- c) personnel's possible claims of minimum wages based on law or in accordance with the collectively agreed scale are met,
- d) all statutory conditions relating to the ban on illegal employment of workers and the avoidance of illegal work are followed based on, by way of example but not limited to, the German Temporary Employment Act, Law on the posting of workers (e. g. obtaining and providing work permits where necessary).
- 13.4 If the Contractor violates its obligations under clause 13.1, 13.2 or 13.3, then BP shall be entitled to withdraw from the PO and/or terminate a continuing obligation (*Dauerschuldverhältnis*) constituted by the PO with immediate effect, and/or claim compensation instead of the agreed goods or service, without prejudice to any other rights BP may have.
- 14. Substances with Hazardous Properties**
- 14.1 If the Contractor's deliveries contain, or the performance of its services involve, the use of a material, preparation or product within the meaning of the European Ordinance (EC) No.1272/2008 (CLP-Ordinance) and/or section 19, subsection 2, No. 1 to 5 of the German Chemicals Act (hereinafter collectively referred to as "**Substances**"), the following conditions must be observed by the Contractor:
- a) Current materials safety data sheets (*Sicherheitsdatenblätter*) in German (with a revision date not older than 1 year) for all Substances shall be made available to BP, in duplicate, at all times, for the first time at conclusion of the contract. The materials safety data sheets must include the classification of the Substances in accordance with the CLP-Ordinance. In the event of any changes, BP shall be sent, unrequested, an updated materials safety data sheet in duplicate.
- b) BP or the co-ordinator identified by BP under section 15 of the German Hazardous Materials Act (*Gefahrstoffverordnung*) shall be provided, unrequested, prior to the beginning of work, with the operational instructions pursuant to section 14 of the German Hazardous Materials Act regarding the Substances to be used by the Contractor, and the required hazard assessment according to the German Labour Protection Act (*Arbeitsschutzgesetz*) and the German Hazardous Materials Act.
- 14.2 If the Contractor should deliver a material, a preparation or a product within the meaning of Article 3 of the European Ordinance (EC) No. 1907/2006 (REACH) (hereinafter collectively referred to as "**Products**"), the following must be observed:
- a) The Contractor warrants that the Products completely comply with the regulations of REACH. The Contractor warrants, in particular, that the Products have been registered within the applicable period.
- b) Without prejudice to further obligations of the Contractor under these GTCP, in particular clause 9, a current materials safety data sheet as described in clause 14.1 a) shall be attached to the packaging at delivery, and made available to BP.
- 14.3 Additionally, the Contractor shall have, at delivery and/or in the provision of a service using Substances and/or Products, the full responsibility for compliance with applicable laws and regulations (in particular (without being limited to) REACH, the German Chemicals Act, the German Hazardous Materials Act, the German Prohibited Chemicals Law (*Chemikalien-Verbotsverordnung*), the German Technical Regulations for Hazardous Materials (*TRGS*) and rules and specifications of the employers' liability insurance associations (*Berufsgenossenschaften*)).
- 15. Compliance with REACH Regulations**
- 15.1 Supplier warrants and represents that it has fully registered all substances contained within the Goods which require registrations (to support identified uses as notified by BP) in accordance with Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") (the "REACH Registration"). For the purposes of this Clause, registration of substances within Goods supplied as intermediates shall not be considered full registration unless otherwise agreed with BP.
- 15.2 Supplier warrants and represents that all supplies of the Goods during the Term will be compliant with REACH and Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on Classification, Labelling and Packaging of substances and mixtures ("CLP").
- 15.3 Supplier will ensure that once registered, all substances contained within the Goods which require REACH Registration continue to have full registrations in accordance with the provisions of REACH.
- 15.4 Supplier will keep BP regularly informed of any changes in the REACH Registration details of any of the substances contained within the Goods.
- 15.5 If reasonably requested by BP for the purpose of legal compliance obligations (and subject to BP maintaining the information as confidential in line with clause 21 (Confidentiality) and to the extent that onward disclosure is not required to meet its legal compliance obligations) Supplier shall provide full details of the REACH Registration of any of the substances contained within the Goods.
- 15.6 Supplier will ensure that the Safety Data Sheet provided to BP accurately reflects the REACH Registration and complies with the Safety Data Sheet content requirements of REACH.
- 16. Quantity and Quality Check, Notification of Defects**
- 16.1 Delivery acceptance is always subject to a quantity and quality check.



- 16.2 In respect of bilateral commercial transactions regarding the purchase of goods or the delivery of movables to be manufactured or produced, the statutory provisions regarding the obligation to inspect delivered goods for defects, and to notify discovered defects (sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch*)) shall apply with the following provision:
- a) The inspection obligation shall in principle be limited to such defects which become evident through a visual examination of the delivered goods at an incoming goods inspection and through a quality check by way of a random sample test. Whether further inspections are required as part of the ordinary course of business depends on the circumstances of the individual case.
  - b) The notification of obvious defects which become evident at the incoming goods inspection or through a quality check by way of a random sample test shall be deemed to have been made without undue delay (and, thus, in time) if it is sent to the contractor within two (2) weeks after receipt of the delivery.
  - c) The obligation to give notice of hidden defects discovered at a later point in time remains unaffected. The notification of such defects shall be deemed to have been made without undue delay (and, thus, in time) if it is sent to the Contractor within two (2) weeks from the time of discovery.
- 16.3 As regards deviations in weight, the weight determined by BP at the incoming goods inspection shall be decisive, unless the Contractor can prove that the weight determined by BP is incorrect. The same shall apply for deviations in quantity.
- 17. Claims based on Defects, Warranties**
- 17.1 The Contractor warrants (*Mängelhaftung*) that all deliveries and/or services will be performed in accordance with the PO and are free from any legal defects and from any defects as to quality and/or quantity (*Rechts- und Sachmängeln*).
- 17.2 The further warranties of the Contractor pursuant to clause 7.2 remain unaffected and complement the Contractor's warranties.
- 17.3 The Contractor's warranties also apply to any parts manufactured or delivered by its sub-contractors and the services carried out by its sub-contractors.
- 17.4 In case of defects of the goods and/or services provided, BP shall be entitled to assert all claims and other rights provided for under contract and/or statutory law without restrictions.
- 17.5 The place of performance for the cure of defects is the factual and intended location of the defective good.
- 17.6 The Contractor is obliged to bear all necessary costs for curing the defect.
- 17.7 BP is entitled to withhold payment of an adequate proportion of the remuneration until proper cure of the defect.
- 17.8 If the Contractor is in default (*Verzug*) with curing the defect or if the prerequisites of section 637 of the German Civil Code (*Bürgerliches Gesetzbuch*) are met, then BP shall be entitled, at the Contractor's cost and expense, to cure the defect itself or to commission a third party to do so. The same shall apply, if the matter is urgent and there is a risk of delay and the Contractor cannot be reached in good time or is incapable of curing the defect in good time. The Contractor must be informed of this immediately. BP reserves the right to assert any other claims, e.g. claims for the compensation of further damages, which BP may have.
- 17.9 In case BP rescinds the PO because of a defect, BP is entitled to continue to use the goods and/or the services of the Contractor free of charge until the procurement of a suitable replacement. In case of such rescission, the Contractor shall bear the costs of taking back the delivered goods or other items to be returned, including the costs of dismantling/elimination as well as return freight, and shall take responsibility for their disposal. The provisions of this clause 17.9 shall apply *mutatis mutandis*, if BP requests damages in lieu of performance because of a defect.
- 17.10 Subject to the following provisions, BP's claims regarding defects shall become time barred in accordance with statutory law:
- a) The limitation period for defect claims is extended by the period of time between notification of the defect and its cure. If the Contractor refuses to cure the defect, the date on which BP receives the corresponding declaration from the Contractor shall be decisive.
  - b) In case of a subsequent delivery or, as the case may be, production of a new work, the limitation period begins anew once the subsequent delivery has been made to the place of performance for the cure of the defect or, if an acceptance is required, upon acceptance of the newly produced work.
- 17.11 The unconditional settlement of an invoice by BP shall neither exclude nor restrict BP's rights regarding a defect or other insufficient delivery or performance; this shall in particular apply to any compensation claims which BP may have.
- 18. Contractor's Liability**
- 18.1 If and to the extent not provided for otherwise in these GTCP or the remainder of the PO, the liability of Contractor under contract shall be governed by the relevant provisions of statutory law.
- 18.2 If and to the extent the Contractor is liable to BP for damages on the merits of the case, the Contractor has to compensate also such expenditures and costs which BP incurs for the purposes of mitigating, avoiding and/or eliminating a damage and, in case of a defect of goods or services provided, for the purposes of assessing and removing the defect; this shall also apply to any internal expenditure or cost of BP, e.g. personnel expenditure or travel cost, relating thereto.



## **19. Termination by BP and Insolvency**

- 19.1 BP is entitled to terminate any PO constituting a contract for work and services (section 631 of the German Civil Code (*Bürgerliches Gesetzbuch*)) and/or a contract pursuant to section 651 sentence 3 of the German Civil Code at any time in accordance with section 649 sentence 1 of the German Civil Code. The following deviation from statutory termination procedures shall apply: If BP terminates such contract for a reason attributable to the Contractor, then the remuneration will only be paid to the Contractor for the individual services which it has carried out up to the receipt of termination notification and which can be used by BP. BP's right to claim compensation remains unaffected; in particular, the Contractor must reimburse BP for any additional costs that may arise.
- 19.2 BP may cancel a PO for deliveries at any time up until the handover of the delivery. In this case, the regulations of sec. 649 of the German Civil Code (*Bürgerliches Gesetzbuch*) and clause 19.1 above apply accordingly for the remuneration claims of the Contractor; BP shall acquire possession of the partial deliveries already received and the delivery items already manufactured or procured by the Contractor for which BP has requested delivery.
- 19.3 If a provisional insolvency administrator is appointed or insolvency proceedings regarding the assets of the Contractor are opened, then BP is entitled to rescind from the PO in full or in part or, in case the PO constitutes a contract for the performance of a continuing obligation, to terminate such contract with immediate effect. In such case the legal consequences specified in clauses 19.1 and 19.2 apply accordingly.

## **20. Insurance**

The Contractor must take out liability insurance cover at standard insurance conditions and with a minimum coverage in an amount of EUR 1.5 million per occurrence for any liability claim of BP against the Contractor and must maintain such insurance cover for the duration of the contractual relationship, including guarantee periods and limitation periods (e.g. for defect claims), all at the Contractor's own cost and expense. The Contractor must submit proof of the insurance cover to BP upon BP's request.

## **21. Confidentiality**

In addition to any other confidentiality agreements in force between the Parties, the following shall apply:

- 21.1 The Contractor is obliged to treat all information that it receives as part of preparations for or implementation of the PO as confidential. This obligation continues to apply beyond the end of the business relationship; it expires within 20 years from the end of the business relationship. This obligation does not apply to information that is or becomes part of the public domain or that the Contractor becomes aware of without violating any internal or external confidentiality obligations (e.g. information received from a third party without being subject to confidentiality or gained from the Contractor's own independent efforts).
- 21.2 All documents provided by BP remain the property of BP. They may not be made accessible to third parties and must be returned to BP in full without special request once the PO has been completed. The specialist workers and sub-contractors commissioned by the Contractor are not considered to be third parties if they have been subject to the same confidentiality obligations in relation to the Contractor.
- 21.3 The Contractor shall be liable to BP for all damages caused to BP by the Contractor or its agents due to violation of these confidentiality obligations, unless the Contractor is not responsible for such violation.

## **22. Proprietary Rights, Right of Use**

- 22.1 BP is entitled to use all diagrams, drawings, calculations, analysis methods, formulations and other works that the Contractor creates or develops in connection with the PO, its issuance or conclusion and consummation.
- 22.2 The Contractor warrants that all goods and services provided are free from any third party proprietary rights (including patents, trademarks, copyright and other related rights). In particular, the Contractor guarantees that the provision and use of the delivered goods and services do not violate any patents, licenses or other third party proprietary rights.
- 22.3 The Contractor shall indemnify BP against third party claims based on any proprietary rights violations and shall bear all costs arising for BP in this context, if the Contractor has breached its obligations pursuant to sections 22.1 and/or 22.2. This obligation to indemnify BP shall not apply, if and to the extent the Contractor is not responsible for such breach.
- 22.4 Without prejudice to any other rights BP may have, BP is entitled either to seek approval for use of the relevant delivered goods and services from the rights holder at the cost of the Contractor or to withdraw from the PO or, in case the PO constitutes a contract for the performance of a continuing obligation, to terminate such contract with immediate effect.

## **23. Publications, Advertisement**

The Contractor is not entitled itself or in conjunction with any other person to use any information, article, photograph, illustration or any other material of whatever kind relating to the PO in publications or for advertising purposes without prior reference to and approval in writing from BP. This requirement shall also apply to the use of BP's proprietary rights (such as patents, trademarks, copyrights and other related rights). Such consent requirement shall apply to each individual use.

## **24. Limitation of the Rights of Set-Off and Retention**

The right of set-off and the right of retention shall only be available to the Contractor if and to the extent that his counter claims are undisputed or *res iudicatae*.



**25. Prohibition of Assignment and Transfer**

Neither party shall be entitled to assign or otherwise transfer rights, liabilities and obligations related to the PO in whole or in part without the prior written consent of the other party, other than assignments or transfers by BP to affiliated companies within the meaning of sections 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*).

**26. Transformations and Change of Control**

The Contractor has to notify BP in writing about any transformation – in particular (without limitation) transformations pursuant to the German Transformation Act (*Umwandlungsgesetz*) or similar legal provisions in other jurisdictions, e.g. mergers, spin-offs and conversions of legal form – and circumstances through which a third person obtains dominant influence over the Contractor, In such case BP reserves the right to rescind from a PO not yet fully consummated or to terminate a contract for the performance of a continuing obligation constituted by a PO with immediate effect if BP, taking into account all circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected to uphold the PO or to continue the contract for the performance of a continuing obligation constituted by the PO until the agreed end or until the expiry of a notice period. This may in particular apply in case a direct competitor of BP obtains a dominant influence over the Contractor.

**27. Digital Security**

The Contractor shall protect BP's data at all times and will implement relevant industry best practice information security protections and controls, including operating information security management practices, relevant technical controls and ensuring that the Contractor's personnel adopt good information security behaviours. The Contractor agrees that it shall immediately notify BP of: (i) any actual, threatened and/or suspected unauthorised or unlawful access to, processing, destruction, damage or disclosure of BP's data; and/or (ii) any accidental loss of BP's data. If an incident referred to in this clause 27 occurs, the Contractor shall provide all necessary assistance as requested by BP with notifications that may be required under applicable law.

**28. Data Protection**

28.1 BP points out that BP will process any personal data, which BP receives from the Contractor according to the EU General Data Protection Act (GDPR) and the German Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG). The processing (including transfer to third parties) will take place only if and to the extent it is necessary for the creation, execution or termination of a contract, for compliance with a legal obligation or permission, or if the Contractor has given consent to the processing.

28.2 If BP engages the Contractor for the processing of personal data on behalf of BP or if personal data is transferred to him for other purposes, the Contractor hereby undertakes to comply with all applicable legal provisions, in particular data protection laws, and if required by such provisions to enter into an additional agreement with BP in that regard (e.g. a contract pursuant to Article 28 GDPR in case of contract data processing by the Contractor on behalf of BP or an arrangement pursuant to Article 26 GDPR in case of joint controllership of the Contractor and BP).

**29. Illegal Restriction of Competition**

If the Contractor intentionally or negligently participates in agreements, decisions or concerted actions which have as their object or effect the prevention, restriction or distortion of competition (e.g. price-fixing, market-sharing) or intentionally or negligently breaches other provisions of antitrust / competition law and if this affects (inter alia) the PO, then the Contractor shall pay to BP liquidated damages in an amount equal to 15% of the net amount owed by BP to the Contractor under the PO, unless the Contractor can prove that the damage of BP is lower (in which case such lower amount shall be paid to BP) or that BP has not suffered any damage at all. Other rights or claims of BP under contract or statutory law, in particular claims for injunction or removal as well as claims for the compensation of a damage exceeding the amount of liquidated damages owed pursuant to the above, shall remain unaffected. The Contractor shall also in respect of breaches of antitrust / competition law be responsible for acts of persons commissioned by, or acting for or on behalf of, the Contractor.

**30. Place of Jurisdiction**

If the Contractor is a businessperson in the sense of the German Commercial Code, a legal person under public law or a special fund under public law, the BP location where the PO was issued shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. BP reserves the right to claim its rights at each other permissible place of jurisdiction.

**31. Partial Invalidity**

If individual parts of these GTCP should be invalid, this shall not affect the validity of the other conditions. The invalid condition shall be replaced by a valid condition that comes as close as possible to the intended economic purpose of the original condition.

**32. Language of Contract/Applicable Law**

Federal German law applies to the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of goods of 11/04/1980. The contract language is English. If the parties use another language, the English version takes precedence. However, if a term in another language (in particular German) is added to an English term for explanatory purposes, then the meaning ascribed to such term in such other language shall be decisive for the interpretation also of the corresponding English term.