

1. General Provisions

These General Conditions of Purchase (hereinafter referred to as «GCP») shall apply automatically and exclusively to all offers, agreements, deliveries as well as services provided by merchants, contractors, suppliers of contractors or vendors (hereinafter collectively referred to as «supplier») of **kiener + wittlin ag**, 3052 Zollikofen, Switzerland, and, on request, of their customers and/or subsidiaries as well as affiliated companies in the inland and abroad (hereinafter collectively referred to as «**kiener + wittlin ag**»). Every person and/or entity, subsidiary or holding company that provides offers, agreements, deliveries as well as services to **kiener + wittlin ag** together with and/or by order of the supplier is considered a supplier.

2. Provision, Offers, Forms of Agreements

Within the context of these GCP, the supplier shall provide the following for the fulfilment of orders:

- All parts (hereinafter referred to as «parts») as specified in **kiener + wittlin ag**'s order as well as in these GCP and in the confirmation (hereinafter referred to as «order confirmation») issued by the supplier, and
- All supplementary services (hereinafter referred to as «services») that can be reasonably expected from a supplier of parts.

The preparation of quotations for **kiener + wittlin ag** shall be by principle always free of charge and non-binding. Exceptions are subject to prior express written consent of **kiener + wittlin ag**. If the supplier does not expressly limit the period of an offer it shall be good till cancelled.

If supplier and **kiener + wittlin ag** have a general agreement, these GCP shall apply for such general agreement as well as for the individual orders. Orders shall be binding for **kiener + wittlin ag** only if made in writing and signed by its legal representatives. Agreements placed over the phone or in person must be confirmed by **kiener + wittlin ag** in writing.

3. Prices, Conditions, Charges, Documents

Prices and payment conditions shall be valid and binding as specified by the supplier in the order confirmation to **kiener + wittlin ag** or, if such confirmation is missing, as referred to in the order placed by **kiener + wittlin ag** with the supplier. In case an order is placed without price indication and/or based on orientation prices, **kiener + wittlin ag** reserves the right to a final order approval after receipt of the order confirmation with the respective prices.

All taxes (with the exception of VAT), fees, licences, permits and other charges payable to the competent authorities in connection with the performance of **kiener + wittlin ag**'s order shall be borne by the supplier and are included in the agreed price. The settlement of all taxes, fees, licences, permits and other charges payable to the competent authorities in connection with customs formalities for export and import shall be the responsibility of the parties concerned in agreement with the applicable specific Incoterms as referred to in the order confirmation from the supplier to **kiener + wittlin ag** or, if such are missing, as referred to in the order of **kiener + wittlin ag** to the supplier. In case of need, the supplier shall make all reasonable efforts within the legal framework conditions to enable **kiener + wittlin ag** to have the VAT refunded. The supplier shall, in this respect, adhere to any instructions given by **kiener + wittlin ag**.

The supplier shall provide **kiener + wittlin ag** – and shall make, if required, the necessary submissions to the competent authorities - all the documents which can be requested for the purpose of export and/or import of parts. Every delivery must be accompanied by all the necessary customs documents under indication of the respective transaction values.

4. Delivery Terms, Extent of Deliveries, Passage of Risk

Unless K + W and the supplier come to a different mutual understanding in writing, the following provisions shall apply:

- The agreed delivery dates and terms shall be binding. If deliveries are made too early, the payment shall not become due until the date calculated based on the expected date of arrival as specified in the order confirmation. **kiener + wittlin ag** must be notified of any immi-

nent delays of delivery without delay. The legal claims applicable in case of delays of delivery cannot be excluded.

- All freight must be accompanied by complete freight documents – in particular, a completed delivery slip with the exact indication of all order details as well as the order number.
- Partial deliveries are permitted only with the express consent of **kiener + wittlin ag** and must be clearly marked as such. Excess or short deliveries of parts are permitted only to the extent according to custom. In case of short delivery, **kiener + wittlin ag** can insist on the fulfilment of the volumes ordered. Further, in case of extraordinary oversupply, **kiener + wittlin ag** can return to the supplier the excess supplies, as compared to the agreed volumes, or can store them at **kiener + wittlin ag**'s own land at the cost and risk of the supplier.
- The supplier bears the risk of accidental destruction and accidental deterioration up to the time of the handing-over of the parts and/or the performance of the services at the point of destination, according to the latest revision of the applicable Incoterms 2000 or their later versions. Deliveries of parts must be insured against transport damage at the supplier's cost.

5. Retention of Title

In case the supplier has retention of title, the ownership in the parts shall pass to **kiener + wittlin ag** with the payment. Other types of title retentions such as the so-called current account retention (all-monies clause) and/or multiple reservation shall not be applicable.

6. Secrecy Obligation

Documentations and other means of production such as samples, drawings, models, tools, technical parameters and/or similar which are provided to the supplier and/or which are paid for by **kiener + wittlin ag** to the supplier, may be used for deliveries to **kiener + wittlin ag** only. Like the goods which were produced after receipt of and/or with these tools, these may neither be made available to third parties nor used for the supplier's own purposes. They must be kept secret and must be handed out to **kiener + wittlin ag** without delay after the processing of the order, without retention of any copies, individual pieces and/or similar parts, and in an impeccable condition.

7. Intellectual Property, Third Party Claims

The supplier attests that all parts and services are free of any claims – including intellectual property rights – of third parties. The supplier is obliged to indemnify **kiener + wittlin ag**, with regard to the parts to be supplied, for any damage due to titles of third parties in the inland and abroad which may result from patents, utility patterns, copyrights or other rights in the inland or abroad, and/or in the case of such titles are claimed by third parties.

8. Quality, Quality Control

The supplier shall observe the highest possible quality standard with regard to the fulfilment of the obligations from these GCP. When manufacturing and delivering the parts, the supplier shall use materials and components of satisfactory quality. The supplier guarantees that all parts free of faults. The delivery must be free of material defects as well as of defects of title, and must conform to the generally recognised codes of practice and the contractually agreed features, standards as well as the regulations on safety, industrial health and safety, accident prevention and other regulations. In case of the presence of a defect, **kiener + wittlin ag** shall have the statutory rights and titles. When fulfilling the order, the supplier shall observe all applicable laws and regulations. The supplier assures that the delivered parts and/or rendered services are in agreement with the above quality requirements and with that, the supplier accepts the responsibility to provide for the respective checking, examinations and tests. In any case, **kiener + wittlin ag** must be informed of all defects detected by the supplier without delay in writing immediately after their discovery.

According to the applicable law, **kiener + wittlin ag** is exempt from any further examination duties and from the performance of quality checks as well as of tests upon the receipt of goods at **kiener + wittlin ag**'s premises and/or the receipt of the services rendered at the destination of delivery. A quality inspection of the product and / or service may be required by **kiener + wittlin ag**; it shall be carried at their own expense. In this case, the product or service may only be shipped after **kiener + wittlin ag** has authorised shipment. **kiener + wittlin ag** can subject the

suppliers to a quality check at **kiener + wittlin ag**'s own cost. Should such a quality check reveal that the supplier does not fulfil **kiener + wittlin ag**'s quality requirements then **kiener + wittlin ag** can, in mutual agreement with the supplier, not only suggest extended quality assurance procedures and/or processes at the supplier's works, but demand the implementation of extended quality assurance procedures and/or processes at the supplier's works at the supplier's cost, as necessary to fulfil the contract.

9. Shipping, Packaging

The supplier ensures purposeful packaging and the compliance with all regulations governing the transport of the parts. The costs for the packaging of the parts as well as transportation packaging are borne by the supplier. The supplier shall refund to **kiener + wittlin ag** the full costs for the return of boxes, pallets, containers and similar materials. Should the supplier use packaging materials which **kiener + wittlin ag** is not able to hand over to a system operator for recycling free of cost, then **kiener + wittlin ag** shall be entitled to return such packaging materials to the supplier or to destroy them at the supplier's cost.

10. Compensation for Damages, Limitation, Warranty

After fruitless expiry of a reasonable extension of the original delivery time in the case of default and/or faulty quality of parts and/or services or title claims of third parties or breach of warranties, **kiener + wittlin ag** can claim compensation (for default) as contractual penalty and/or withdraw from the contract and claim damages instead of the delivery of parts and/or performance of services. Damages can relate to direct, indirect and/or consequential damage, loss (including without limitation financial loss and/or lost profit) as well as any other costs in connection with the default of delivery, legal costs, and compensations for damages as well as necessary renovation and reconstruction works.

kiener + wittlin ag must examine the delivered goods for possible defects within reasonable time and place a complaint with the supplier if applicable. The complaint has been placed in time if it is received by the supplier within a term of 20 work days from the date of the receipt of goods or – in case of hidden defects – from the date they were detected. If the supplier has made representations regarding the origin of the parts and/or services, then the supplier shall be obliged to replace any damage that incurs due to the impossibility to trace the origin back, for example, because of faulty documentation or non-existent means for verification. This liability of the supplier shall apply only in case of culpable bearing or the lack of a promised quality.

Unless otherwise agreed in writing and/or a longer period is provided for by law, the warranty period shall be 24 months from the delivery of the parts and/or rendering of the services. The rights from such warranty shall not be considered lapsed if **kiener + wittlin ag** may not submit an immediate complaint with the supplier. The warranty period shall start anew with the delivery of replacement parts and/or after the repair of parts and/or reworking of services as well as in accordance with further provisions of these GCP. An indefinite warranty shall apply to any sort of direct and indirect damage or consequential damage and loss (including without limitation financial damage and loss as well as lost profit) as well as to all other costs in connection with a defect due to hidden defects. Should third parties raise a claim against **kiener + wittlin ag** after the expiry of the said warranty period, then **kiener + wittlin ag** shall have the indefinite right to claim full compensation from the supplier even after having made payments and/or performed services to such third parties. If standard parts and/or services are to be altered to suit the specific needs of **kiener + wittlin ag** based on an express order, this shall not affect the above warranty obligations, provided that the supplier has not expressly pointed this out towards **kiener + wittlin ag** in writing. During the warranty period, **kiener + wittlin ag** shall have the discretionary right to demand a delivery of replacement parts in impeccable condition or a repair and/or reworking on the defective parts at the cost of the supplier, and to do such work by themselves, have it done by third parties or request the supplier to do this, at the supplier's cost. In addition to the replacement delivery and repair and/or reworking, the supplier shall fully compensate **kiener + wittlin ag** for any damage caused by defective parts and/or defective services and/or services not provided in accordance to the provisions of these GCP (including without limitation financial damage and loss, as well as lost profit, and including without limitation damage to products of third party suppliers and loss of production as well as compensation claims for damages of other third parties against **kiener + wittlin ag**).

11. REACH and RoHS Regulations

The supplier stands in for its deliveries being in compliance with the provisions of the Regulation (EC) No. 1907/2006 on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation) as well as the provisions of the restriction (and/or the use of certain) dangerous materials according to the RoHS Regulation (EC) No. 2002/95.

12. Force Majeure

If any contractual party should not be able to orderly fulfil its obligations due to occurrences of force majeure, the other party cannot exercise any rights therefrom, irrespective on whatever legal grounds.

13. Legal Effect, Data Protection

Should any provision of these GCP be invalid due to legal provisions, the validity of the remaining provisions shall remain unaffected. By issuing an order confirmation of the supplier to **kiener + wittlin ag**, the supplier acknowledges these GCP to their full extent. The supplier expressly waives the exercise of its own general conditions of sale. Any amendments or supplements of the contract made by the supplier must be confirmed by **kiener + wittlin ag** in writing to be valid. This shall also apply to the waiver of the contractual requirement of the written form. In case that these GCP do not cover any obligatory provisions, only **kiener + wittlin ag** can change, cancel, delete in whole or in part and/or revoke these GCP at any time and without prior notice. All provisions regarding the liability and the proprietary title in the delivered parts shall remain in force even after the termination, cancellation or revocation of these GCP in part or in whole. Legally relevant declarations of intent of the supplier shall be valid only, if submitted in writing.

kiener + wittlin ag shall be entitled to process and store data about the supplier obtained in connection with the business relationship – also if they originate from third parties – in its computer systems under observance of data protection and privacy, and/or to have such data processed and stored by third parties acting on behalf of **kiener + wittlin ag**.

14. Place of Fulfilment, Place of Jurisdiction, Applicable Law

Unless not agreed otherwise by contract, the place of fulfilment for the payment and the delivery shall be **kiener + wittlin ag**'s place of business. Place of jurisdiction for all legal disputes shall be the competent court in Bern, Switzerland, also if the supplier is a body corporate or a special fund under public law. Claims against **kiener + wittlin ag** can be filed only there. The applicable law shall be exclusively the law of Switzerland, under exclusion of the international private law and of the unified international law, but including without limitation the Swiss version of the UN Convention on Contracts for the International Sale of Goods (CISG).