

General Conditions of Procurement

1. General

1.1. These General Conditions of Procurement (GCP) shall govern the procurement relationship (contract negotiation, conclusion, content, processing) of FISBA AG (FISBA) with its suppliers. They shall apply irrespective of the type of contract, i.e. irrespective of whether FISBA concludes e.g. a contract of sale, work and service contract or an innominate contract.

1.2. Any general terms and conditions of business of the Supplier shall be excluded or shall apply only in as far as FISBA has agreed to them individually or in total in -writing or in electronic form. In particular, FISBA does not accept any general terms and conditions of suppliers by the acceptance of an offer, acceptance of a confirmation of order, delivery, service etc., or the making of a payment etc.

2. Contract negotiation and conclusion

2.1. In the course of a call for tenders or a specific enquiry, FISBA makes reference to its GCP and invites suppliers to submit a written or electronic offer with a period of validity of at least three months. With the submission of an offer and/or the acceptance of an order (confirmation of order), the supplier accepts FISBA's GCP without reservation.

2.2. The Supplier's offer and any associated consultancy services, demonstrations, technical documents or supply of samples by the supplier shall be provided free of charge to FISBA.

2.3. The Supplier's offer shall be drawn up in accordance with FISBA's call for tenders or specific enquiry (see 2.1 above). In particular, the offer shall contain the price of the subject matter of the contract (excluding accompanying costs (see 3.2 below)), the place of supply (place of fulfillment), the date of supply and shall refer to any drawings/technical delivery conditions provided by FISBA. The Supplier shall point out in written or electronic form any possible deviations to FISBA's call for tenders or specific enquiry; the Supplier acknowledges a duty to inform in this respect.

2.4. The conclusion of the contract shall come about by a written or an electronic acceptance of the Supplier's offer by FISBA. FISBA's silence about an offer from the Supplier shall not signify acceptance. The Supplier shall confirm the conclusion of the contract with a written or electronic confirmation of order without delay.

2.5. If, following the conclusion of the contract, the Supplier submits a confirmation of order with content deviating from the contract (except delivery dates), then FISBA shall be bound by it only if FISBA has accepted it in written or electronic form. FISBA's silence on an amendment to a contract shall not signify acceptance.

3. Price

3.1. The price offered by the Supplier (excluding the associated costs (see 3.2 below)) shall apply as a fixed price for the whole order quantity.

3.2. The associated costs (e.g. delivery costs or costs for the material tool and layout) shall be set out separately and in detail by the Supplier in his offer.

4. Terms and conditions of delivery

4.1. The terms and conditions of delivery (cost and bearing of risk) shall be determined in accordance with the FCA («Free Carrier») rule of Incoterms 2010 published by the International Chamber of Commerce (ICC).

4.2. The Supplier shall deliver the subject matter of the contract in the order quantity and quality to the FISBA forwarder at the stipulated date and place of supply (place of fulfillment). At the same time, the documentation of the subject matter of the contract proof of quality, test certificates etc. in accordance with FISBA's call for tenders or enquiry shall be made available to the FISBA forwarder in electronic form. Supply shall be deemed to have been fulfilled at the moment the subject matter of the contract is loaded at the FISBA forwarder and the associated documentation transferred to the forwarder or made available to FISBA in electronic form.

4.3. In addition, the Supplier shall be obliged in particular to obtain customs clearance for export for the subject matter of the contract, to securely package it for transport up to FISBA's incoming goods department (place of fulfillment) and to advise the FISBA forwarder regarding collection in good time, at least three days before delivery.

4.4. Delivery or transfer to the FISBA forwarder shall not constitute acceptance of the delivery by FISBA. If FISBA finds deviations with respect to the quantity (over- or underdelivery) in the course of incoming goods inspection of the subject matter of the contract at the place of fulfillment (see 4.3 above), FISBA shall be able to reject the whole of the delivery. Likewise, FISBA shall also be able to reject the whole of the delivery in the case of a partial delivery or early delivery (delivery before the stipulated delivery date (see 4.2 above)). In the event of an over-, under- or partial delivery, or early delivery, the Supplier shall inform FISBA without delay in written or electronic form and request approval.

4.5. The transfer of risk to FISBA takes place at the time of completed delivery of the subject matter of the contract (see 4.2 above).

5. Default and non-fulfillment

5.1. The Supplier shall be automatically in default (event of default) in the event of (a) a missed delivery date (see 4.2 above), (b) inadequate clearance for export (see 4.3 above), (c) late informing (see 4.3 above) or (d) rejected delivery (see 4.4 above). In the event of an impending or actual default, the Supplier shall be obliged to inform FISBA without delay in written or electronic form.

5.2. In the event of default (see 5.1 above), FISBA shall alternatively be able within five days to (a) refuse the delivery and withdraw from the contract, (b) set an extension of time and insist on the delivery or (c) refuse the delivery and remain in the contract. In addition, the Supplier, in as far as he does not prove that he is not at fault, shall be liable to pay a contractual penalty of 0.5% of the price of the subject matter of the contract (price of the subject matter of the contract excluding associated costs (see 3.1 above)) per commenced week of delay, but not more than a total of 5%. Payment of the contractual penalty shall not relieve the Supplier from fulfilling his obligations to FISBA nor from the liability to pay further damages.

6. Defective performance

6.1. The Supplier shall have defectively performed or the subject matter of the contract shall be defective if it exhibits defects (physical or legal defects) and/or lacks properties assured by him (warranty event). Incomplete, defective or unreadable documentation of the subject matter of the contract (including proof of quality, test certificates etc. in accordance with the FISBA call for tenders or enquiry (see 1.2 above)) shall also be considered a warranty event.

6.2. In the event of a warranty event (see 6.1 above), FISBA may, at its own discretion, request (a) reworking, (b) replacement, (c) price reduction or (d) rescission (partial or complete rescission). In addition, FISBA shall be able to claim damages in connection with the above warranty event. The Supplier shall be liable for the damages caused that arose «as a direct consequence» of the defective subject matter of the contract without the presence of other causes of damage (i.e. expectation interest, damages caused by a defect). The Supplier shall be liable for the damages that arose from additional partial causes in «remote consequence» of the defective subject matter of the contract, unless he can prove that he is not at fault.

6.3. The period of limitation shall be two years for moveable purchased goods/work, and five years for immovable work and for moveable purchased goods/work that has been integrated in accordance with requirements into an immovable work, beginning in each case from its entry into the place of fulfillment (see 4.3 and 4.4 above). FISBA shall be able to give notification of the defective subject matter of the contract (see 6.1 above) at any time within the applicable limitation period. Any possible payment, continued use etc. of the subject matter of the contract shall have no adverse effect on FISBA's claims or right to claim (see 6.2 above and 6.4 below).

7. Subcontracting and external processing

7.1. In the case of subcontracting, the Supplier shall manufacture an independent product from the material or components (material for the job) made available by FISBA and shall supply this product to FISBA.

7.2. In the case of external processing, the Supplier performs the individual processing steps (e.g. finishing by coating or polishing) on the material or components (material for the job) made available by FISBA and shall supply these to FISBA.

7.3. The terms and conditions of the subcontracting and external processing shall be based on these GCP. In particular, in the event of an unsuccessful, delayed or defective fulfillment by the Supplier (default or warranty event), the provisions for default or non-fulfillment (see 5.2 to 5.2 above) or defective fulfillment (see 6.1 to 6.3 above) and, in relation to the obligations of the Supplier regarding the material for the job, the provisions concerning the materials and know-how of FISBA (see 9.1 to 9.5 below) shall apply.

8. Respecting the intellectual property rights of third parties

8.1. The Supplier shall guarantee that he does not infringe any kind of intellectual property rights of third parties (patent, trademark, design, sign protection rights etc.) by the supply or use of the subject matter of the contract supplied by him.

8.2. Should FISBA face legal action in this respect, the Supplier shall hold FISBA completely harmless. If the Supplier infringes the intellectual property rights of third parties, FISBA shall also have an immediate right of withdrawal from the contract.

9. Materials and know-how

9.1. The samples, models, tools, molds and know-how made in particular available to the Supplier by FISBA and all other materials, drawings and documents given over to the Supplier (collectively: contract material) shall remain in the ownership of FISBA. The same shall apply with respect to the material for the job provided to the supplier for subcontract or external processing (see 7.1 and 7.2 above).

9.2. The Supplier shall take the utmost care to keep safe the contract material and/or material for the job (duty to preserve). This preservation shall be at no cost to FISBA. The Supplier's duty to preserve shall also specifically include excess delivered or defective material for the job supplied by FISBA for subcontract and external processing or material for the job damaged by the Supplier (e.g. out-of-specification parts) until FISBA has informed the Supplier of FISBA's disposition decision (e.g. redelivery to FISBA or disposal) in written or electronic form.

9.3. The Supplier shall use the contract material and the material for the job with the utmost care (duty of care) and disclose any problems with regard to the contract material and the material for the job without delay (duty to disclose).

9.4. In the event of breaches of the duty to preserve (see 9.2 above), duty of care (see 9.3 above) or duty to disclose (see 9.3 above), the Supplier shall compensate FISBA for damages arising.

9.5. Supplier's claims against FISBA shall not be able to be offset with FISBA contract material and/or materials for the job and/or insurance services. Furthermore, all rights of retention of the Supplier on FISBA contract material and/or materials for the job shall be excluded.

10. Confidentiality and the involvement of third parties

10.1. The Supplier shall maintain strict confidentiality about the procurement relationship (see 1.1 above). All the items passed to the Supplier by FISBA (including contract material (see 9.1 above) and material for the job (see 7.2 above)), documents and information may be used only within the scope of the procurement relationship. Any form of use by the Supplier in third-party relationships shall be strictly forbidden. In particular, a supplier may not undertake any form of advertising using FISBA or its property, documents and information, including in anonymized form.

10.2. The Supplier shall take adequate measures to ensure this duty to maintain confidentiality is complied with by its employees and permitted involved third parties (see 10.3 below).

10.3. The Supplier may involve third parties (e.g. subcontractors, substitutes) only with FISBA's prior written or electronic agreement. The involvement of a third party shall not relieve the Supplier from his obligations to FISBA.

10.4. If this duty to maintain confidentiality is breached by the Supplier or his employees and/or involved third parties, the Supplier shall be liable to pay a contractual penalty of CHF 50,000.00 for each breach unless he can prove that he is not at fault. The payment of the contractual penalty shall not relieve the Supplier from fulfilling his obligations towards FISBA. In any case, FISBA shall be able to claim further damages and demand the rectification of situations contrary to the contract (enforcement by direct legal measures).

11. Duty to insure

11.1. The Supplier shall be obliged to take out liability and indemnity insurance with adequate cover against possible claims for damages arising from the procurement relationship with FISBA (see 1.1 above).

12. Data protection

12.1. The Supplier and FISBA shall be obliged to comply with data protection requirements at all times, in particular the applicable data protection requirements of the Swiss Data Protection Act (DSG) and – in as far as it is applicable – the provisions of the EU GDPR.

12.2. FISBA shall be solely responsible for determining the purpose and the means of processing personal data by the Supplier within the scope of the contract (i.e. scope of the commission/agreement). All processing of personal data shall be performed exclusively based on this clause or on specific instructions from FISBA.

12.3. The Supplier shall be obliged in particular:

(a) To process no more data than necessary and use it only for the agreed purpose and under no circumstances use it in any form against FISBA's interests. In particular, it may not be sold or commercialized directly or indirectly in any other way;

(b) To process data in accordance with FISBA's instructions; the Supplier shall confirm all the customer's instructions without delay in writing or by electronic form;

(c) If permissible, the Supplier shall report if he cannot comply with the contract or a FISBA instruction;

(d) Undertake the necessary technical and organizational security measures and ensure compliance with the relevant requirements by employees and third parties who use its equipment and systems. The appropriate security measures shall be presented to FISBA in a separate document;

(e) After the completion of the provision of the processing services, all personal data shall be either deleted or returned on the written request and at the choice of FISBA and any copies deleted, unless there is a legal obligation to save the personal data;

(f) Ensure that his employees, vicarious agents, possible associated companies, organizations and authorized third parties comply strictly with the data protection requirements and that the personal data is transferred or made accessible to them only to the extent necessary for them to fulfill their duties;

(g) The data subjects shall be informed about the processing of the data relating to them and, if applicable, the required permissions for the data processing obtained;

(h) Requests from persons about the data that are processed on behalf of FISBA shall be passed onto the persons responsible for dealing with them. If FISBA is obliged to make available information relating to personal data to anyone, the Supplier shall provide the appropriate extent of support to FISBA in making this information available;

(i) Notify FISBA without delay about deficiencies, breaches, irregularities and infringements of data protection requirements and the associated circumstances, without making them known beforehand in any other way.

12.4. The Supplier shall indemnify FISBA with respect to all losses, damages and costs, including the costs of legal prosecutions that may arise from an infringement of statutory data protection requirements by him, and especially in as far as expenditures that have to be made to avert actions by third parties, including the competent supervisory authorities.

12.5. At the request of FISBA, the Supplier shall make known at least those subcontractors («authorized third parties») that process the personal data made available to him on behalf of FISBA. The Supplier shall obtain the written agreement of FISBA prior to involving each additional subcontractor. No additional subcontractor may be appointed without the above written permission. FISBA shall have the sole discretion to request the dismissal of an existing subcontractor. In drawing up agreements with authorized third parties, the Supplier shall ensure that FISBA can enforce claims directly against subcontractors, vicarious agents or third parties.

13. REACH, CLP, ROHS, Conflict Minerals

13.1 The Supplier shall only supply goods which comply with the provisions of the current version of REACH (Registration, Evaluation, Authorization and Restriction of Chemicals) Regulation (EC, European community) No. 1907/2006 on the registration, evaluation, authorization and restriction of chemicals. In particular, the substances contained in the goods shall be pre-registered or registered to the extent required under the provisions of the REACH Regulation. The Supplier shall provide FISBA with safety data sheets and further necessary information without these being specifically requested in accordance with the provisions of the REACH Regulation. In particular, restrictions and/or bans on substances or uses and any content of substances on the candidate list (SVHC Substances of Very High Concern) must be observed and reported.

13.2 Chemical substances and compounds shall be classified, labeled and packaged in accordance with the CLP (Classification, Labeling and Packaging) Regulation of EC No. 1272/2008.

13.3 The Supplier shall ensure that the subject matter of the contract is compliant with the current versions of ROHS (Restriction of Hazardous Substances) 2011/65/EU (European Union), that it complies with the provisions of WEEE (Waste of Electrical and Electronic Equipment) 2012/19/EU, the Swiss Ordinance ChemRRV (Chemicals Risk Reduction Ordinance / Appendix 2.18) and the ChemV (Chemicals Ordinance / Article 71) and is suitable for RoHS compliant manufacturing processes.

13.4 The Supplier shall ensure that it does not supply any materials or products referred to in the Conflict Minerals / Dodd-Frank Act (Public Law No. 11-203, Title XV: Sec 1502) and shall guarantee the lawful origin of such minerals.

14. Jurisdiction and applicable law

14.1. FISBA reserves the right to include specific individual agreements such as confidentiality agreements, quality assurance agreements (list not exhaustive) as constituent parts of the contract.

14.2. Disputes that arise out of or in connection with the procurement relationship (see 1.1 above) between FISBA and the Supplier, shall be subject exclusively to the jurisdiction of the ordinary courts of St. Gallen (CH).

14.3. Before a party resorts to the ordinary courts of St. Gallen (CH), it must propose an arbitration body that will arbitrate the dispute to the counterparty. The counter-party shall be able to accept or reject the proposal within ten days.

14.4. In every instance, Swiss material law, taking into account the Code, shall exclusively apply to the whole legal relationship between FISBA and the Supplier. The FCA (Free Carrier) rule of Incoterms@2010 published by the International Chamber of Commerce shall apply, to the exclusion of the Vienna Sales Convention.

These General Conditions of Procurement (GCP) come into force on 1 January 2019 and replace all earlier FISBA general conditions of procurement or purchasing terms.

St. Gallen, January/2019