# GPC – GENERAL PURCHASING CONDITIONS FOR DELIVERIES OF MATERIAL AND GOODS

Company Register: FN 310929z
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The following provisions apply as agreed components of the contract for all orders by Lukas Lang Building Technologies GmbH (hereinafter referred to as "Employer") in relation to contractors (hereinafter referred to as "Contractor"), unless otherwise specifically agreed in writing (contract, minutes of negotiation).

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## 1. Introductory Provisions

Our Purchasing Conditions shall apply exclusively; any Contractor's general terms and conditions of business that contradict or deviate from our Purchasing Conditions shall not be accepted unless we have agreed to them expressly in writing. The acceptance of goods of the Contractor or their payment shall not constitute any agreement.
In the event of any inconsistencies or disputes, provisions in contracts and/or minutes of negotiations shall always have priority over the General Purchasing Conditions.

## 2. Conclusion of Contract

**2.1**
Requests by the Employer shall be non-binding and shall not oblige the Employer to any compensation or reimbursement of expenses whatsoever for a subsequent preparation of an offer under any legal title whatsoever. On the other hand, requests by the Employer shall constitute merely invitations to interested parties (potential Contractors) for them to present offers to the Employer.

**2.2**
Offers by the Contractor must correspond literally with the request text and include the request numbers specified in the head of the request. Offers that do not fully include the Employer's Purchasing Conditions or refer to GTCs of the Contractor as far as they are concerned shall not be accepted by the Employer.

**2.3**
By placing his offer, the Contractor irrevocably declares that all information included in his offer is correct and complete and that all requirements (including those demanded by the Employer or stipulated by law) for fulfilment of his deliveries and services are met.
If the Contractor is of the opinion that the Employer's tendering documents are unclear or faulty, he shall notify the Employer of possible deficiencies or concerns immediately in writing, however not later than within one (1) week from receipt of the tendering documents and still before submitting his offer, and provide suggestions for a solution.
Unless otherwise agreed in writing, the deliveries offered to the Employer by the Contractor must include all materials, equipment, ancillary works and any work performances belonging to the scope of contract in accordance with the technical documents and required for complete fulfilment of the contract.

**2.4**
Offers by the Contractor which do not include an explicit deadline for acceptance shall be binding for the Contractor and may be accepted by the Employer up to the end of twelve (12) weeks as of their receipt by the same.
Acceptance of the offer shall become valid as of documented receipt of the Employer's written declaration of acceptance by the Contractor ("Order)". The Employer's acceptance may also be communicated by fax or by e-mail. The Contractor shall be obliged to document receipt of the Employer's declaration of acceptance by sending a confirmation to the Employer immediately.
This confirmation shall not include any binding declaration, but serve exclusively for documentation.

**2.5**
All contracts between the contractual parties shall be concluded exclusively in written form and these GPCs shall be an inextricable part of them and start to apply on the date of signing of the contract. The written form shall also be fulfilled by electronic data transmission or fax.

**2.6**
Verbal agreements of any kind, including retrospective amendments and addenda to our Purchasing Conditions, shall require the written confirmation by the Employer in order to be effective.

**2.7**
The main requirements of the contract are:

- Contract number
- Article name, article number, revision
- Quantity of goods and price
- Place of acceptance of goods
- Demanded delivery date

**2.8**
The Employer shall be entitled to demand a change to the delivery item, namely to its volume and design. The consequences of these changes, primarily in connection with extra or reduced costs as well as the delivery dates, shall be adjusted appropriately in relation to the original price documents and the price level of the contract by written agreement between the contractual parties.

**2.9**
Any full or partial handover of the agreed deliveries to other subcontractors by the Contractor shall require the Employer's written approval.

**3. Terms of Delivery**
**3.1**
Deviations from our transactions and orders shall only be permissible after our prior written approval.

**3.2**
Agreed dates and deadlines shall be binding. Receipt of the goods at the place of delivery specified in the order shall be decisive for fulfilment of the delivery date. Unless delivery "free works" (DAP or DDP in accordance with Incoterms 2010) has been agreed, the supplier shall provide the goods punctually taking the time to be coordinated with the carrier for loading and shipping into account.

**3.3**
If the supplier anticipates any difficulties with regard to production, source material supply, compliance with the delivery date or similar circumstances, which may prevent him from delivering punctually or delivering the quality agreed, the supplier shall inform our ordering department immediately.

**3.4**
The unconditional acceptance of a delayed delivery shall not include any waiver of claims for damages due to us for the delayed delivery.

**3.5**
The Contractor shall be liable for compliance with the agreed dates, and if he does not comply with the defined dates as the result of a fault on his part, the Employer shall be entitled to demand a contractual penalty. If the agreed date is exceeded, it shall be subject to a contractual penalty regardless of culpability of 0.5% of the total contract value per calendar day of default commenced, however not more than 5% of the total contract value. The contractual penalty need not be reserved upon acceptance of fulfilment.
Delayed source material supply shall not release the Contractor from this obligation. The Employer's right to assert claims for damages in excess thereof shall remain unprejudiced.
The Employer shall be entitled to set off the amount equivalent to the contractual penalty against the payment of partial invoices or the final settlement upon issuance of the relevant invoice and to settle these invoice payments in the thus reduced amount.

**3.6**
Shipments shall be made in accordance with the Employer's instructions. The same shall be entitled to change the shipping address up to the dispatch day, whereby any resulting ancillary costs shall be borne by the Employer. Assigned shipments within the meaning of paragraph 3.6 shall not effect the transfer of risk and ownership as regulated in paragraph 3.10.

**3.7**
Unless otherwise agreed in writing, the place of fulfilment for deliveries by the Contractor shall be the Employer's delivery address specified in the relevant order.

**3.8**
The Contractor shall submit a copy of the shipping notice with detailed specification of the order reference to the Employer upon shipment. An additional copy of the shipping notice shall be sent to the shipping address in such due time that the necessary arrangements for receipt of the delivery can be made. If necessary, the shipment shall also be announced by e-mail or fax as soon as the exact shipping date has been determined.

**3.9**
The order number, the order date, the Contractor's commission, the quantity, the technical specification and any other necessary information must be stated on all shipping papers.

**3.10**
Risk and ownership of the deliveries to be provided by the Contractor shall transfer to the Employer upon complete handover to the same at the place of fulfilment. The Contractor shall bear the risk of accidental loss, destruction or deterioration up to acceptance of the goods by us or our representative (e.g. contract manufacturer) at the place to which the goods must be delivered in accordance with the contract. Partial deliveries, even if these were contractually agreed, as well as the usage of partial deliveries by the Employer shall not effect any transfer of risk. The Employer explicitly declines any retention of title by the Contractor.

**3.11**
The Contractor shall label and dispatch the goods in accordance with the relevant practices of a proper businessman and according to the Employer's specifications, so that any damage during transport is avoided and efficient unloading, handling and storage of the goods is possible. All goods must be labelled clearly as designated for the Employer. The Contractor shall be liable for any damage resulting from deficient storage, packaging and handling.

**4. Fulfilment Dates**
The Contractor acknowledges and accepts that the fulfilment of agreed dates by the Contractor is a major contractual obligation of the Contractor for the Employer. Early delivery attempts by the Contractor shall require the explicit written consent by the Employer, otherwise the taking receipt of these by the Employer shall not effect any acceptance as fulfilment either (no fulfilment of contract).
If any reasons for a delay occur, the Contractor shall be obliged to inform the Employer of these immediately in writing, thereby stating the expected circumstances of the delay in an understandable manner. The Contractor shall only be released from liabilities for damages by this announcement if the delay evidently occurred at the Employer's fault or due to force majeure (as defined in paragraph 14).

**5. Storage and Provision by the Employer**

**5.1**

Any material provided by the Employer shall remain the Employer's property and shall be stored by the Contractor free of charge and with the diligence of a proper businessman, separately from the Contractor's other items and labelled as the Employer's property. It may only be used for the execution of our order. Any damage to the provided material shall be made good by the Contractor.

The Contractor may be subjected to an inventory periodically on demand by the Employer. As long as the demand is at acceptable intervals, it shall be free of charge.

The Employer shall be notified immediately by the Contractor of any intermediate changes of stock that occur.

If the Contractor processes the provided material, this shall be done on our behalf. We shall immediately become the owners of the new goods created thereby. If the provided material only makes up a part of the new goods, we shall be entitled to co-ownership of the new goods at a share equivalent to the value of the provided material contained therein.

**5.2**

The provided material must be checked for quantity and external defects upon acceptance. Identified defects must be reported to the Employer immediately in writing and noted on the shipping bill.

The risk shall transfer to the Employer's representative authorised to receive (e.g. contract manufacturer) upon handover of the goods.

**6. Product Liability**

**6.1**

In the case that any claims are raised against us based on product liability, the Contractor shall be obliged to indemnify us against such claims, if and insofar as the damage was caused by a defect of the contract goods delivered by the Contractor. However, in cases of fault-related liability, this shall only apply if the Contractor is to blame. If the cause of damage lies in the Contractor's area of responsibility, he must prove that he is not to blame.

**6.2**

In the cases of paragraph 7.1, the supplier shall bear all costs and expenses, including the costs of possible legal action.

**7. Warranty and Damages**

**7.1**

The Contractor shall warrant and be liable under law of damages that his deliveries show a proper and careful condition and design and comply with the order, all applicable legal provisions, the Employer's applicable standards, the relevant standards as well as the state of the art. The Contractor shall verify the suitability of the standards, guidelines and other regulations to be applied in accordance with the contract or an order and, if necessary, warn the Employer of any impediments to the proper fulfilment of contract prior to the provision of services (warning duty).

The Contractor's warranty shall apply both for all open defects identified within the warranty period as well as all hidden defects identified within the warranty period for hidden defects stipulated in paragraph 7.5.

**7.2**

Notwithstanding other rights of the Employer or any warranty obligations of the Contractor, the Contractor shall be immediately obliged to replace all parts that are fully or partly defective as a result of design, material or other faults or rectify such defects at own costs, including the costs for troubleshooting, assemblies, tests, freight etc. In addition, the Contractor shall provide those deliveries again at own costs which proved to be unsuitable for the fulfilment of contract with regard to quality or quantity

The Contractor shall hold the Employer harmless and compensate him for any damages and expenses incurred as a result of such defects or their rectification (without limitation including fines imposed by authorities and third-party claims against the Employer).

**7.3**

If the Contractor does not comply with his obligations in accordance with paragraph 7 immediately, the Employer shall be entitled to rectify the defects and/or damages at the costs of the Contractor after a reasonable period. The Employer shall be entitled to rectify the defects or damages at the costs of the Contractor immediately and without notice if their rectification appears urgent for the Employer (in particular in connection with services and deliveries of other contractors of the Employer).

**7.4**

The Employer shall be free to demand improvement, replacement, price reduction and/or cancellation within the scope of the warranty rights. However, the Employer shall only have the right to cancellation of contract in the case of non-minor defects. With regard to his rights to indemnification, the Employer shall have the option to demand monetary compensation, improvement or replacement.

**7.5**

The warranty period shall commence at the time of complete handover of the delivery to the Employer, which must unconditionally comply with the applicable terms of contract. Partial deliveries as well as the usage of partial deliveries by the Employer shall not cause any deadlines to be triggered. The warranty period for improved parts shall commence upon complete handover of the improved part.

If hidden defects occur after complete handover of the delivery/improvement with regard to expressly promised characteristics, the warranty period shall commence as of the time of such hidden defects becoming detectable.

In the event that nothing else has been explicitly agreed between the Employer and the Contractor or peremptory statutory provisions stipulate otherwise, the warranty period shall be three (3) years.

If defects are identified during the warranty period, it shall be assumed that such defects existed at the time of complete handover of the delivery.

The Employer must notify the Contractor of any defects within the relevant applicable warranty period in order for warranty claims not to be barred by limitation. Moreover, the Employer shall not be obliged to assert any defects in court during this period; however, he shall have the right to do this within two (2) years after the end of the warranty period.

The Employer's right to assert defects without time limitation by plea shall remain unprejudiced. If the goods and/or services delivered or provided by the Contractor are designated for resale by the Employer, with or without processing, the Contractor shall warrant for the period until the warranty obligation of the orderer in the contractual relationship with his client ends as well.

**7.6**

The commercial notification obligation and its legal consequences pursuant to Section 377 *UGB* [Austrian Business Code] as well as the commercial retention right pursuant to Section 369 ff *UGB* are excluded. The

provision of Section 351 *UGB* (gross disparity) is also excluded.

**7.7**
The Contractor shall, exclusively at the Employer's demand and explicit request, also cede his claims for damages or warranty out of causes from the contractual services which the Contractor holds against his sub-suppliers or producers, to the Employer. In this case the Contractor shall be free from his own obligations, inasmuch as the Employer is satisfied by this cession. The supplier may not assert a right to this cession therefrom.

**7.8**
If we incur any costs as a result of defective delivery of the subject matter of contract, in particular transport, travel, labour, installation, dismounting or material costs or costs for an incoming inspection exceeding the usual scope, these costs shall be borne by the Contractor.

**8. Termination of Contract**
**8.1**
The Contractor shall be entitled to terminate the contract with immediate effect, in whole or in parts, in the case of breach of any major contractual obligation.
Any claims for damages of the Employer for non-fulfilment shall not be affected by such a termination. The Employer shall be entitled to (a) accept deliveries by the Contractor offered in breach of contract (e.g. incomplete, delayed, defective) and then claim warranty and/or damages, (aa) demand immediate replacement/improvement of the deliveries offered in breach of contract or (aaa) to simply rescind the contract and claim damages for non-fulfilment.

**8.2**
The Employer shall be entitled to terminate the contract in writing, in whole or in part, in the following cases:
(a) with immediate effect, if the Contractor loses his licence or qualification for fulfilment of the contract or becomes bankrupt, or bankruptcy proceedings or composition in bankruptcy proceedings are initiated against the Contractor's assets, or a petition in bankruptcy is dismissed for lack of funds (inasmuch as a termination due to bankruptcy is not subject to limitations under peremptory national insolvency law);
(b) in accordance with the circumstances described in paragraph 13 (force majeure).

**8.3**
Documented deliveries already provided by the Contractor up to the effective termination shall be compensated by the Employer if these have resulted in a clear, unambiguous and permanent advantage for the Employer. These deliveries shall be compensated by aliquotation of the remuneration agreed with the Contractor in accordance with the agreed remuneration modalities. Any claims by the Contractor in excess thereof, in particular to indemnification, shall be excluded in the case of any full or partial termination of contract pursuant to this paragraph.

**9. Terms of Payment and Invoicing**
**9.1**
The price agreed in the contract shall be a fixed price and include delivery "free destination". All transport, insurance, packaging and other ancillary costs and fees up to delivery at the receiving agency specified by the Employer shall be compensated with the price, unless otherwise agreed.

**9.2**
If no specific agreement is made, invoices shall be paid either within 21 days with a deduction of 3% discount or within 30 days without deduction as of the payment claim becoming due and receipt of both the invoice as well as the goods. Payment shall be made subject to invoice auditing.

**9.3**
Unconditional payment of the invoice amount by the Employer shall not constitute any recognition of the Contractor's delivery as in accordance with the terms of contract.

**9.4**
The Employer's payments shall be made electronically once per week by means of bank transfer, cheque, gross-net bill of exchange, or sales tax clearing transfer. A payment shall be deemed to have been made on time if the remittance amount is received by the bank or the cheque or bill of exchange is posted or the clearing transfer amount is received by the tax office within the week in which the discount or net payment term ends.
The beginning of the discount term shall be the time of receipt of the invoice by the Employer. Incorrectly addressed or unauditable invoices shall not trigger the discount term.

**9.5**
In the event of insolvency of the Contractor, the Employer shall be entitled – if rescission of the contract is not possible – to modify and redefine the payment modalities and/or the modalities of the provision of services/delivery unilaterally.

**9.6**
All payments made by the Employer to the Contractor shall be conditional and not constitute the recognition of any claim, whether with regard to amount nor merit.

**9.7**
If no written and substantiated objection is raised by the Contractor within six (6) weeks from dispatch or transfer of the Employer's final payment, all claims against the Employer by the Contractor under this transaction shall be deemed as settled.

**9.8**
Invoices shall be paid in EUR, unless otherwise agreed.
All invoices for payment purposes shall be sent to the Employer's registered office by post. The order number and order designation shall be stated on the invoice. Two (2) additional copies shall be enclosed with the shipping documents in the case of deliveries abroad. The Employer reserves the right to reject any invoices that do not include this information.

**9.9**
Fixed prices shall apply, unless agreed otherwise.

**9.10**
The Contractor shall not be entitled to assign or pledge his claims or have these collected by third parties without the Employer's prior written consent. In such a case the Employer may retain a lump sum of 2% of the invoice amount for additional manipulation costs.

**10. Employer's Liability Insurance**
The Contractor shall be obliged to hold an employer's liability insurance that is appropriate in relation to the contract value and the risks associated with provision of the delivery and document its existence to the Employer at his request before commencing fulfilment of the contract. Failure to do so will cause the Contractor to be in default and the Employer shall be entitled to forbid the Contractor's delivery until a relevant insurance certificate

is presented. The Employer alone shall be entitled to assess whether the presented insurance certificates show a coverage that is appropriate for the subject matter of the contract and the risks associated with provision of the delivery.

**11. Addenda and Amendments to Contract**

Any amendment or change of contract must be made in writing, whereby the document summarising the change order must expressly be declared as such. This shall also apply to any waiver of the written form. The declaration by fax shall comply with this formal requirement, whereas the declaration by e-mail shall not.

**12. Documents and Confidentiality**

**12.1**

All standards, specifications, drawings, calculations, regulations and the like as well as model and tools provided to the Contractor by the Employer shall remain the property of the Employer and must be returned immediately at the Employer's demand. They may not be copied, stored or remain with the Contractor in any form whatsoever in any other manner, nor must the Contractor provide or make them accessible to any third parties or use them for any other purposes than the fulfilment of statutory (contractual) obligations vis-à-vis the Employer. Any retention right of the Contractor whatsoever shall be ruled out.

**12.2**

The Contractor shall be obliged to handle any information obtained from the Employer (or at his order from third parties) or otherwise in connection with the fulfilment of contract with strict confidentiality and only use it for fulfilment of the contractual obligations. If disclosures of information to third parties are bindingly necessary for the fulfilment of contract, the Contractor shall obtain a non-disclosure agreement from these beforehand, which shall be at least as favourable for the Employer as the one in accordance with the provisions set out herein. The Contractor shall any in any case be responsible for possible breaches of the obligation of confidentiality by his personnel and fully hold harmless and indemnify the Employer.

Any information about the project's existence, content and progress shall require prior written approval by the Employer. In particular, any public statements and declarations as well as any contacts with the press, radio, television or other media shall not be permissible until they have been approved in writing and the contents coordinated with the Employer.

Any inclusion of the Employer in the Contractor's list of references, in particular on his website or in advertising materials, shall also require the Employer's prior written approval. The Contractor shall not be entitled to use the trademarks or other signs protected for the Employer or companies affiliated with the same. Other statutory non-disclosure obligations, in particular obligations of the Contractor resulting under national data protection laws, shall remain applicable without limitation.

**13. Force Majeure**

Force majeure, operational disruptions beyond our control, regulatory actions and other unavoidable events shall release us from the obligation of punctual acceptance for the duration of their existence. During such events as well as within two weeks after their end, we shall be entitled, notwithstanding our other rights, to rescind the contract in whole or in parts, inasmuch as these events are not of insignificant duration and our demand reduces significantly due to the resulting alternative procurement.

**14. Governing Law and Venue**

Contracts concluded on the basis of these Purchasing Conditions, including all aspects of their conclusion, validity and enforcement, shall be governed by Austrian substantive law under exclusion of its rules of conflict. Moreover, application of the UN Convention on Contracts for the International Sale of Goods shall be explicitly excluded.

The exclusive venue for any disputes arising under these Purchasing Conditions and the contract based thereupon, including the precontractual relations or other legal relations between the Employer and the Contractor, in particular any disputes in connection with the conclusion, termination, cancellation, ineffectiveness and rescinded transaction thereof, shall be the court of jurisdiction for commercial matters in Vienna Inner City, unless regulated otherwise.