

General terms and conditions of purchasing of EQOS Energie Österreich GmbH

1. Scope

1.1. The present General Terms and Conditions of Purchasing apply to business transactions with **EQOS Energie Österreich GmbH** (hereinafter "EQOS Energie") as principal.

1.2. These Terms and Conditions of Purchasing (hereinafter "GTCP") are an essential and integral part of every order placed and every contract concluded by EQOS Energie. Any terms and conditions deviating herefrom shall only apply if they have been explicitly accepted by EQOS Energie in writing. Silence on the part of EQOS Energie shall not be deemed acceptance.

1.3. The present GTCP shall enter into force on 01/06/2015. All previous GTCP of EQOS Energie are hereby annulled.

1.4. The contractual partner of EQOS Energie (hereinafter also referred to as "supplier") agrees that, in case the former uses its GTC and in case of any conflicting provisions, the provisions of the GTCP of EQOS Energie shall prevail.

1.5. In case of orders placed by means of contracts for work and materials (service + delivery), these GTCP shall be deemed a supplement to ÖNORM B2110 (as at 15 March 2013), if such contracts have been agreed, and in case of orders placed by means of supply or purchase contracts (delivery) as supplement to the applicable legislation for transactions between entrepreneurs.

2. Quotation

2.1. In the absence of an explicit provision to the contrary, confirmed in writing by EQOS Energie, any quotations or cost estimates addressed to EQOS Energie shall in any case be binding and without charge. The supplier shall be bound to its quotation for 6 months after receipt of the quotation by EQOS Energie.

2.2. All quotations submitted to EQOS Energie shall bear the respective company's legally binding signature.

2.3. If EQOS Energie has attached a timetable to the request for submission of a quotation, the supplier shall confirm upon submitting a quotation, that it disposes of the corresponding capacities to perform the deliveries and/or services in a timely manner.

3. Order

3.1. Orders by EQOS Energie shall only be binding if made in writing. Oral orders – including orders placed by telephone – shall only be valid if they are subsequently confirmed by EQOS Energie in writing within 5 workdays.

3.2. Orders placed by EQOS Energie shall be confirmed by the supplier in writing (order confirmation) within 10 workdays after the date of posting. If no such confirmation is effected, and unless the order is demonstrably rejected in writing within the above-stated period, it shall be deemed accepted. All inquiries in relation to orders shall be addressed to the purchasing department of EQOS Energie. Any letters and other documents etc. relating thereto shall indicate the order number as well as the cost centre number of EQOS Energie.

3.3. Any samples, drawings, tender documents or other supporting material provided by EQOS Energie shall remain the property of EQOS Energie and must not be used for any other purpose than to implement the orders, and may only be made accessible to third parties upon EQOS Energie's prior written consent. In the absence of any other agreement, they shall be returned without charge after completion of the order.

4. Delivery dates and contractual penalty

4.1. The delivery dates agreed are considered as fixed dates. In case of delayed delivery – even in the instances listed in

§ 918 (2) ABGB [Austrian civil code] (divisible performance) – EQOS Energie shall be entitled – without prejudice to any further legal claims – to cancel the contract without granting a period of grace and sending a notice of default. Nevertheless, as soon as the supplier realises that it is not going to be able to deliver, or deliver in full, in time, it shall inform EQOS Energie accordingly in writing without delay, stating the reasons and the expected duration of the delay. Acceptance of the goods shall only be possible during the office hours of EQOS Energie.

4.2. In case of default, a contractual penalty is hereby agreed, regardless of the supplier's fault, which shall not be considered as damages. It shall amount to 0.75% of the entire amount of the contract for each calendar day started. The maximum penalty shall be 10% of the contract amount. Any indirect and direct loss exceeding the contractual penalty shall be compensated by the supplier. The right of reduction in court with respect to the amount of the penalty is explicitly excluded.

5. Delivery terms and acceptance

5.1. Any goods purchased by EQOS Energie shall be considered as a debt to be discharged at the payee's domicile; delivery shall take place DDP (Incoterms 2010) including transport, dispatch, packaging and unloading. The supplier shall accordingly bear the cost and risk – even that of accidental perishing – of the transport to the place of performance. The goods must be handed over after unloading.

5.2. The risk of loss of or damage to the goods shall only pass to EQOS Energie upon handover. During shipping the shipping instructions of EQOS Energie must be observed in all cases, and every consignment must be accompanied by a delivery slip indicating the internal cost centre of EQOS Energie and the order number. If no such delivery slip is enclosed with the consignment, it shall not be accepted and/or processed as contract performance, but shall be stored at the cost and risk of the supplier. Any loss incurred due to non-observance of this provision shall be at the supplier's expense in full.

5.3. If EQOS Energie has indicated a contact person upon placing the order, the goods must be handed over exclusively to said person or to his/her stand-in in person. Delivery slips shall only be considered valid by EQOS Energie if they bear the signature and show the full name of the recipient and/or contact person. If the order does not indicate any contact person, the goods must be handed over to staff members of EQOS Energie exclusively.

5.4. Unless anything to the contrary was agreed between the parties, official acceptance shall take place upon completion of all services by the supplier. Confirmations of receipt and countersigning of activity confirmations shall not be deemed acceptance of the performance designated therein. The supplier shall notify the completion of its performance and submit a request for acceptance. If the appointment determined for acceptance must be repeated for reasons which the supplier is responsible for, the latter shall bear all costs of the additional appointment for acceptance, without prejudice to any claims on the part of EQOS Energie beyond that.

5.5. Transport insurance

- The cost of transport insurance shall be included in the agreed prices in each case. For the rest, all incidentals associated with implementation of the order that are not explicitly dealt with in the contract shall be at the supplier's expense.

- The supplier shall be obliged to take out adequate insurance against any losses and risks and to provide evidence of such insurance cover to EQOS Energie without delay in case of an event of loss and upon request, as well as to indicate the

General terms and conditions of purchasing of EQOS Energie Österreich GmbH

insurance company including the policy and to advise the domicile of the insurer.

5.6. Foreign trade

In the absence of any other provision, the goods purchased by EQOS Energie shall be delivered duty paid to the latter. Should EQOS Energie have to meet any formal requirements for the corresponding goods to be released by the customs office or by any other authorities, EQOS Energie shall be informed by the supplier accordingly before concluding the contract, and the corresponding documents shall be handed over to EQOS Energie in time.

6. Prices

6.1. Unless explicitly agreed otherwise, the prices are net firm and fixed prices that cannot be increased for any reason whatsoever. The prices are inclusive of packing and delivered and unloaded free to destination. Any extra cost for accelerated transport to keep the deadline shall be borne by the supplier. Any subsequent price changes (even if approved by a subcommittee of the Parity Commission for Wages and Prices), modifications of quantity, premature deliveries or partial deliveries shall only be legally binding if they were explicitly approved in writing by EQOS Energie. In any case, the delivery of goods shall be effected free of any liability for taxes or charges on the part of EQOS Energie.

6.2. In any case, the exclusion of the right of EQOS Energie to challenge the contract for *laesio enormis* on the part of the supplier shall be excluded.

7. Invoice and payment

7.1. Unless anything to the contrary has been agreed explicitly in writing, the following terms of payment shall apply:

- 60 days with 3% cash discount or
- 90 days net

calculated in each case from the date of receipt of the auditable invoice and submission of guarantees and/or bonds, if agreed.

7.2. Payment shall not mean acknowledgement of the due performance of the delivery, and accordingly no waiver of the claims EQOS Energie is entitled to based on defective performance and/or warranty or damages. However, EQOS Energie shall reserve the right to effect any payments only if upon receipt of the supplier's invoice any documentation requested or customary of the work or delivery items is enclosed. If this is not the case, EQOS Energie will return the invoice until the corresponding documentation has been submitted.

7.3. EQOS Energie shall be entitled to withhold 10% of the invoice amount of partial (final) invoices as financial retention. For final invoices, a financial retention of 5% shall be withheld. The financial retention will be disbursed against submission of the original of an abstract irrevocable bank guarantee issued by an Austrian bank of high financial standing. Any bank guarantees to secure the financial retention shall have a term and/or validity corresponding to the warranty period plus three months and shall also include instances of bankruptcy, composition or rejection of a bankruptcy filing for lack of assets.

7.4. If the service was performed prematurely, the term of payment shall not commence any earlier than on the day when the service should have been performed under the contract. If, however, EQOS Energie has agreed to premature performance of the service, the relevant period shall commence upon receipt of the auditable invoice. If, in case of premature service performance by the supplier, EQOS Energie incurs any additional costs, EQOS Energie shall be entitled to charge these costs – unless any provision to the contrary was made in

writing between EQOS Energie and the supplier.

7.5. In case of the subcontracting of construction work within the meaning of § 19 (1a) *Umsatzsteuergesetz* 1994 [turnover tax act], explicit reference is made to the applicability of §§ 67a – 67d and § 112a ASVG [general social insurance act]. If at the time of payment of the compensation by EQOS Energie the company charged with executing the order is not included in the complete list of indemnifying companies (*HFU-Gesamtliste*), EQOS Energie shall transfer 20% of the payable compensation (amount of liability) directly and with the effect of discharging the debt to the service centre established at WGKK [Vienna regional health insurance fund]. The supplier shall indicate its employer number on the invoices.

7.6. Invoicing shall be effected in triplicate upon due delivery of the goods and/or performance of the services. Invoices that are not issued in line with the requirements of EQOS Energie as well as those of the sales tax act, and/or that do not include the order number or cost centre number of EQOS Energie will not be processed by EQOS Energie and/or returned to the supplier for correction. In this case, the invoices shall not be deemed to have been issued until they are sent again in due form.

7.7. In case of the cancellation of orders, no cancellation fees or other fees of any kind whatsoever must be asserted.

7.8. The supplier shall not be authorised to offset its own claims against any of EQOS Energie's claims. EQOS Energie shall be entitled to offset claims in relation to a default on the part of the supplier against other claims of the supplier. The supplier expressly agrees that claims of affiliated companies of EQOS Energie (e.g. parent company, subsidiaries or affiliate, allied company, participation companies of EQOS Energie), and claims of joint ventures to which EQOS Energie or its affiliated companies belong, may also be offset by EQOS Energie in a similar manner.

7.9. The assignment of any of the supplier's claims against EQOS Energie shall have no legal force.

8. Warranty, liability and compensation for damages

8.1. Within the meaning of the product liability act [*Produkthaftungsgesetz*], the supplier shall have unrestricted liability for damages. Restrictions of any kind of the claims for compensation due to EQOS Energie according to this act or under any other legal provisions shall not be acknowledged. The supplier warrants that all deliveries and/or services correspond to the latest state of the art, the relevant legal provisions, any standards issued by authorities or professional and technical associations and/or generally recognised institutions of standardisation. The supplier further warrants that the deliveries and/or services are free from any defects and correspond to the requirements of EQOS Energie.

8.2. Warranty

- For a period of 3 years after acceptance of the goods by EQOS Energie, the supplier shall be fully liable for all goods and components delivered and/or assembled by it, regardless of whether they were manufactured by the latter or not.

- In case of remediable defects or such defects that do not prevent the proper use of the goods delivered and/or services rendered, EQOS Energie reserves the right – without prejudice to any other legal claims – to demand either a price reduction or alternatively the removal of the defect. The same shall apply in case of non-recoverability of an insignificant defect within the meaning of § 932 (2) ABGB. All costs associated with the enforcement of the right of redhibition shall be borne by the supplier. In particular, the supplier shall also be obliged to compensate any indirect or direct loss.

General terms and conditions of purchasing of EQOS Energie Österreich GmbH

- Apparent defects shall be deemed to have been reported in time if they are notified to the supplier within 6 months. This period shall commence upon acceptance of the goods. Acceptance shall not take place before the goods are put into use and/or before formal acceptance of the service.

- In case of defects that are invisible and/or hidden, the 6-month period of notice shall only commence upon the time the defect is detected. The contrary provisions of §§ 377, 378 UGB [Austrian business code] shall be waived explicitly. The supplier explicitly waives to raise an objection of delayed notice of defects.

- The supplier hereby irrevocably offers to assign its warranty and damages claims vis-à-vis its subcontractors, if any. The assignment may be accepted at any time and even orally.

8.3. Damages

- Deviating from the legal provisions, the supplier shall assume the obligation of full compensation for any degree of fault. The supplier shall be liable for product defects and, in each event of loss which it is accountable for, also for any financial loss of third parties. The relief of liability and restrictions of liability granted to the supplier under the product liability act are waived explicitly.

- The supplier undertakes to provide for full indemnification, even and in particular with respect to the provisions under public law.

9. Property rights

The supplier represents that it disposes of all required entitlements to prevent any violations of proprietary rights and patents. The supplier shall fully indemnify EQOS Energie in this respect. The cost incurred by EQOS Energie through the defence of unjustified third-party claims shall be compensated in full by the supplier.

10. Retention of title

10.1. The supplier's reservation of title shall be excluded.

10.2. Any supporting material provided to the supplier by EQOS Energie shall not automatically pass into the ownership of the supplier.

11. Admission and quality

11.1. Apart from the properties required in the order, only those services of the supplier that comply with the recognised standards of good practice, the applicable legal and official provisions and requirements (ÖNORM, building regulations, admission etc.) and with the building material admission ordinance of the respective countries (federal *Länder*) shall be considered as contractual performance. The cost of any admission tests, notifications or other officially required measures shall in any case be borne by the supplier.

11.2. Upon request, the supplier shall issue to EQOS Energie a certificate of inspection for goods delivered and/or services rendered.

11.3. The supplier agrees to support EQOS Energie within the scope of its technical capacities in carrying out any measures undertaken by EQOS Energie in order to secure quality and/or ensure industrial safety. In any case, the supplier agrees to allow and assist with the execution of quality audits on its premises, also by accredited test institutes if necessary.

12. Supporting material and services provided, obligation to inspect and to warn

12.1. The supplier shall be obliged to verify the completeness of goods or services provided by EQOS Energie upon handover. The quality of the goods and/or services provided shall be thoroughly and adequately inspected immediately after

handover. Should said goods/services not comply with the contractually agreed requirements, the supplier shall notify EQOS Energie accordingly within 2 workdays after handover.

12.2. Moreover, the supplier shall notify EQOS Energie of all other circumstances which the supplier has to warn about within the scope of its "obligation to warn", also within 2 workdays after finding out about said circumstances.

13. Confidentiality

The supplier undertakes to keep confidential all business- or product-related information that it comes to know about within the scope of the order, such as, in particular, documents, construction plans, but also business-related data. This obligation shall apply for a period of 5 years after delivery and service provision.

14. Right to refuse performance

14.1. In case of justified complaints based on legal as well as material defects of the delivery, EQOS Energie shall be entitled to withhold the entire remuneration still outstanding.

14.2. Legal disputes about performance shall not entitle the supplier to withhold deliveries or to suspend or delay the provision of services.

15. Withdrawal and termination

15.1. EQOS Energie shall be entitled at any time to declare its withdrawal from the contract if the supplier persistently acts or has acted in a way that violates the provisions of the present GTCP.

15.2. A change of the financial situation of the supplier and/or a change of the ownership structure, provided the latter impacts on the financial situation, and/or a change of the legal form of the supplier shall entitle EQOS Energie to prematurely withdraw from the contract, if no sufficient securities are provided by the supplier.

16. Special terms for framework agreements

16.1. The framework quantity corresponds to the expected requirement, with EQOS Energie being entitled – provided it does not call the framework quantities in full within the fixed period – to call the basically fixed framework quantity within the 6 months following the initially fixed period at the same terms and prices. The supplier undertakes to provide services and/or goods also to other affiliated companies of EQOS Energie, should the requesting company not be directly indicated as principal or purchaser in the framework contract.

16.2. Compliance with the order quantities stated presupposes an undisturbed work process. Events of force majeure, breakdowns, restrictions within the energy sector, strikes, difficult transport and weather conditions, official orders, changes of plan or design, and any other events that cannot be avoided even with the due care of a prudent businessman shall release EQOS Energie from acceptance without any liability for compensation and shall not constitute a default in acceptance.

16.3. Partial calls may be effected by telephone or in writing, with the supplier undertaking to deliver the goods within 3 days after receipt of the call in each case. The supplier shall be responsible for verifying the legitimacy of the call.

16.4. Should any inspections of the goods reveal deviations from the order specification, EQOS Energie reserves the right to withdraw from the entire contract (remaining quantity) without granting a period of grace, even in case of deviations with respect to a partial delivery only or in case of a delay.

16.5. The relevant prices under framework agreements are maximum prices. If EQOS Energie is in a position to purchase

General terms and conditions of purchasing of EQOS Energie Österreich GmbH

the goods elsewhere at more favourable prices and notifies the supplier accordingly during the term of the relevant order, the latter may immediately declare in writing to reduce the prices of the relevant order to the reduced prices substantiated to it. If the supplier does not do so, EQOS Energie shall be entitled to cancel the relevant order forthwith and to purchase the goods elsewhere with immediate effect.

17. Environmental protection, hazardous materials

17.1. Regardless of statutory duties of instruction, the supplier shall provide to EQOS Energie all required and expedient information about the goods to be delivered or the service to be rendered, in particular information regarding proper storage as well as safety data sheets according to Regulations 91/155/EEC, 93/112/EEC and 99/45/EC, as amended in each case. The supplier shall also point out to EQOS Energie the possibility of the accumulation of hazardous waste or waste oil in connection with the goods delivered by it and in doing so indicate the type as well as options for disposal, if any, in particular. Upon the request of EQOS Energie, the supplier shall be obliged to take over the waste remaining after proper use of the goods supplied or any equivalent goods, within the meaning of the waste management act, limited, however, to the quantities delivered by it. Should the supplier refuse to take over such waste or if such takeover is not possible, EQOS Energie may effect disposal at the expense of the supplier.

17.2. The supplier guarantees that the deliveries to be effected by it on the basis of the order comply with RoHS (Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment) and accordingly correspond to the threshold values in connection with the RoHS Directive on the restriction of the use of certain hazardous materials in electrical and electronic equipment (EC Directive 2002/95/EC as amended) at the time of delivery. In case of non-RoHS-compliant deliveries, the supplier shall reimburse EQOS Energie for all losses resulting from the deliveries without prejudice to any warranty claims.

17.3. If the delivery contains goods that must be classified as hazardous materials under international regulations, the supplier shall inform EQOS Energie accordingly upon confirmation of the order at the latest.

18. Anti-corruption clause, corporate ethics and human rights

18.1. Anti-corruption clause

The supplier declares and agrees to neither (directly or indirectly) offer any kind of advantage to third parties, nor to accept (directly or indirectly) any gifts or payments for itself or for others, nor to procure, promise or accept promises of any other advantages that are or may be considered as illegal practice or bribery.

18.2. Corporate ethics

The supplier declares and explicitly agrees to comply with the laws of the respectively applicable legislation, to desist from corruption and bribery, from money laundering, to observe the basic rights of its employees, to refrain from using child labour, and to safeguard the health and safety of its employees. Furthermore, the supplier declares and agrees to comply with the laws as well as national and international standards regarding environmental protection.

18.3. Human rights

Furthermore, the supplier declares and agrees to observe the European Convention on Human Rights (ECHR) dated 04/11/1950, which entered into force on 03/09/1953, including

its respective amendments.

18.4. The supplier shall impose the above-stated declarations and obligations under items 18.1., 18.2. and 18.3. upon its sub-contractors and suppliers.

18.5. In case of violations by the supplier against items 18.1., 18.2., 18.3. or 18.4., EQOS Energie shall be entitled to cancel the contract with immediate effect. Moreover, the supplier shall indemnify EQOS Energie in every respect.

19. Final provisions

19.1. Place of performance

The place of performance for both parties shall be the destination indicated by EQOS Energie.

19.2. Applicable law

Austrian law shall apply exclusively, to the exclusion of the conflict of law rules under private international law and of the UN Convention on Contracts for the International Sale of Goods.

19.3. Place of jurisdiction

The exclusive place of jurisdiction shall be the materially competent court in Linz / Donau, Austria.

19.4. Miscellaneous

The supplier explicitly undertakes to observe all norms, such as in particular police norms, penal norms, labour law norms, legal norms relating to the protection of employees and to the employment of foreigners, legal norms relating to environmental protection, trade law and building legislation, in the course of any delivery. In case any claims are asserted by third parties, the supplier shall fully indemnify EQOS Energie in this respect.

19.5. Severability clause

Should any provisions of these GTCP prove invalid, all other provisions shall not be affected thereby. In that case, a provision approximating the desired economic purpose as closely as possible shall be deemed agreed.