

## **GPC - General Purchasing Conditions**

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### **1. CONTRACT DOCUMENTS**

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1.1 These General Purchasing Conditions ("GPC") apply to all contracts or agreements concluded between RUPP + HUBRACH OPTIK GMBH ("R+H") or one of its subsidiaries and a supplier or service provider ("SUPPLIER") for the provision of products and/or services ("PRODUCTS").

1.2 Unless otherwise agreed, the following documents constitute all obligations between R+H and the SUPPLIER and take precedence in the order in which they are mentioned in the text: (a) purchase order issued by R+H; (b) conditions agreed between the parties; (c) documents provided or referred to by R+H that describe the form of the product, its function, content or other requirements in detail ("Specifications"); (d) General Purchasing Conditions; (e) SUPPLIER's offer, insofar as it relates to the technical or commercial proposal. Unless otherwise agreed, these GPC shall take precedence over the SUPPLIER's terms and conditions.

1.3 Changes to obligations are only binding for the contracting parties if they have been expressly agreed in writing by the parties.

1.4 The term "in writing" and similar expressions shall include fax messages and similar means of communication, including e-mails.

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### **2. PURCHASE ORDER AND ACCEPTANCE**

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2.1 All procurements made by R+H require a written purchase order issued in paper or electronic form. Purchase orders must indicate the date, delivery address, quantity, unit price, item number and product name. Orders placed verbally or by telephone are to be confirmed by R+H in writing.

2.2 The SUPPLIER shall confirm receipt of the order to R+H as stipulated on the purchase order. The order shall be deemed accepted if no order confirmation has been received within forty-eight (48) hours.

2.3 R+H may cancel an order at any time prior to receiving the SUPPLIER's order confirmation, upon notifying the SUPPLIER in writing, whereby the cancellation becomes effective immediately on the date of receipt of such notification by the SUPPLIER.

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### **3. DELIVERY AND CONTRACTUAL CONFORMITY OF THE GOODS/SERVICES SUPPLIED**

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3.1 The PRODUCTS shall be delivered to the contractually stipulated place of delivery in accordance with the terms and conditions agreed in the purchase order and shall include all relevant documents.

3.2 The agreed delivery clauses shall be construed in accordance with "Incoterms 2010" as defined by the International Chamber of Commerce, Berlin, Germany. Unless otherwise agreed, all deliveries shall be made DDP as defined in the Incoterms.

3.3 The SUPPLIER shall notify R+H immediately in writing of any known or suspected circumstances that may delay delivery and shall specify the length of the delay in delivery as well as the type of remedial measures to be taken.

3.4 Since adherence to delivery deadlines is an essential and decisive condition of the purchase order, the SUPPLIER shall be solely responsible to R+H for any delay in delivery, and shall be obliged to make a lump sum compensation payment to R+H amounting to 2% of the delivery value (before tax) per working day of the delay, without, however, exceeding 30 working days for accrued lump sum compensation. However, this compensation does not

release the SUPPLIER from its obligation to compensate for any other damage which R+H may have suffered.

3.5 The delivered PRODUCTS shall be inspected/checked and their receipt acknowledged at the R+H site. The SUPPLIER shall not consider the signature and/or stamp of R+H on the delivery note as final acceptance. All deliveries and/or services shall not be deemed accepted until the department(s) authorised by R+H has/have verified their conformity to the purchase order and specifications or after R+H has expressly and unconditionally confirmed acceptance in accordance with the acceptance procedures agreed by the contracting parties.

3.6 The SUPPLIER shall at its own expense immediately replace any PRODUCTS delivered to R+H that do not comply with the specifications (including short deliveries) - unless R+H prefers, after notification of said non-conformity, to request the cancellation of the purchase and/or to procure the PRODUCT from another supplier of its choice, at the SUPPLIER's expense, or to demand compensation for damage in another form.

3.7 The SUPPLIER undertakes to inform R+H in good time of any significant changes to the specifications of the PRODUCT and/or to its manufacturing process or any other changes that might affect such specifications.

3.8 All PRODUCTS must comply with the specifications and meet the quality and safety requirements for a period of twelve (12) months following the delivery of the PRODUCTS. These warranties are in addition to all other warranties specified herein or implied by law, and shall survive termination of the agreement, and inspection, delivery, and/or acceptance of, and payment by R+H for such PRODUCTS.

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#### **4. TRANSPORT AND PACKAGING**

4.1 Packages must contain only PRODUCTS of the same type and must be prepared according to the carrier's requirements and in such a way as to prevent damage and deterioration. Each shipment must contain a packing list clearly indicating the R+H purchase order number. When several items are packed together, the invoice and the packing list must indicate each product type individually. In addition, the Customs Code (HSC) and the country of origin of each item must be specified.

4.2 Each container and each package is to be labelled in accordance with the applicable rules and the provisions in force in the country of destination. If the shipped PRODUCT is subject to the legislation on the transport of dangerous goods, the SUPPLIER shall be obliged to ensure that he and his forwarder comply with the provisions of said regulations and the relevant industry standards, as the case may be. Above all, the SUPPLIER must ensure that emergency measures to minimise the environmental impact of an accident (leakage, spillage, product reaction etc.) are complied with.

4.3 In order to protect the environment, R+H urges the SUPPLIER to use reusable and/or recyclable packaging to reduce the volume and variety of components used in the packaging production process, thus facilitating the storage and disposal of packaging waste.

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#### **5. PRICES, INVOICING AND PAYMENT**

5.1 The price specified in the purchase order is firm and final - without indexation clauses or reference to a sliding scale - less applicable taxes and customs duties. No price increase shall become effective without the prior express and written consent of R+H. Unless otherwise agreed, the price shall not include any assignment of intellectual property rights, depending on the individual case.

5.2 In the event of purchases made in a foreign currency, the invoice amount cannot be linked to exchange rate fluctuations of another currency for a defined period of time. The invoiced currency shall under all circumstances be the same as the currency specified on the purchase order.

5.3 Invoices shall be issued no earlier than the date of delivery of the product and correspond to the purchase order. The invoice shall include all information necessary for the identification and verification of the supplied product. The purchase order number must be indicated on the SUPPLIER's invoices. Otherwise, R+H shall be entitled to return the invoice to the SUPPLIER.

5.4 Payment shall be made by R+H when due in the form of bank transfers. The SUPPLIER shall provide R+H with its bank details and shall confirm them at R+H's request.

5.5 Unless otherwise agreed or required by law, the period of payment shall be sixty (60) days following the date of invoice, alternatively 3% discount within 14 days.

5.6 Default of payment which is not remedied within thirty (30) days after receipt of a written reminder entitles the SUPPLIER to claim a late fee, amounting to at least three times the current standard German interest rate. In addition to the aforementioned contractual penalty, any default of payment shall result in the payment of a fixed compensation of forty (40) € for collection costs.

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## **6. TRANSFER OF TITLE AND RISKS**

6.1 Unless otherwise agreed, the transfer of title shall take place upon delivery of the PRODUCT in accordance with the purchase order.

6.2 The SUPPLIER shall bear all risks relating to loss of and damage to the product until the risk of loss is transferred to R+H in accordance with the applicable Incoterm provisions, unless such delivery is refused by R+H in accordance with the provisions of Article 3.

6.3 A retention of title clause proposed by the SUPPLIER shall not be valid vis-à-vis R+H unless R+H expressly agrees to it in writing. The SUPPLIER shall ensure that its subcontractors do not invoke a retention of title clause for components supplied by them that are part of the PRODUCT.

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## **7. Intellectual PROPERTY RIGHTS**

7.1 "Intellectual property rights" include trademarks, trade names, service marks, database rights, patents, supplementary protection certificates, utility models, industrial design rights, copyrights (including computer software), rights in undisclosed or confidential information (such as know-how, trade secrets, patentable or non-patentable inventions) and similar rights (whether registered or unregistered) and applications for such rights as may exist anywhere in the world.

7.2 Unless otherwise agreed, intellectual property rights arising from the agreement shall pass to R+H at the time of delivery. If the purchase of PRODUCTS by R+H initiates development or design work, R+H shall be entitled to the intellectual property rights arising from such work, and the SUPPLIER undertakes to provide R+H with all documents required for the transfer of intellectual property rights.

7.3 The SUPPLIER warrants that no third party's intellectual property rights are infringed by the PRODUCT or its use. Therefore, the SUPPLIER undertakes to indemnify and hold R+H and R+H customers harmless against all costs and claims of third parties as well as against court decisions or court orders which may have been or may be issued against R+H or its customers. The SUPPLIER undertakes to indemnify and hold R+H harmless against

all costs, expenses or sums that R+H may incur in connection with the PRODUCTS supplied, in particular with regard to patents, licences, trademarks, models or other intellectual property rights.

The SUPPLIER shall therefore be obliged to support R+H free of charge upon the first written request by R+H and to reimburse R+H for all legal costs, consultancy and lawyer's fees and other expenses and/or to reimburse R+H for all damage or loss incurred by R+H as a result of an action brought against it based on the assertion of a claim or right.

7.4 The SUPPLIER is aware of the fact that production for its own or third party account is inadmissible if R+H owns the intellectual property rights to a PRODUCT. The SUPPLIER may only use company names or trademarks of R+H if R+H has given its prior written consent.

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## **8. LIABILITY –WARRANTIES -INSURANCE**

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8.1 The SUPPLIER shall assume full responsibility towards R+H and be fully liable for all adverse consequences resulting from non-compliant PRODUCT quality or quantity. To this end, the SUPPLIER undertakes to indemnify and hold R+H harmless from and against all claims of any kind which may be asserted in connection with a service, as well as from any and all adverse consequences arising for R+H as a result thereof. In particular, the SUPPLIER shall be liable towards R+H for hidden defects which impair the PRODUCTS and could render them unsuitable for their intended use.

8.2 Costs and expenses arising from the exchange or return of defective or non-compliant PRODUCTS shall be borne by the SUPPLIER.

8.3 The SUPPLIER warrants to R+H that identical or compatible spare parts will be available for a period of ten (10) years from the date the sold PRODUCT has been received. The SUPPLIER undertakes to inform R+H in sufficient time if said spare parts are not available and to observe a notice period of 24 months if the production of said parts is to be discontinued. The SUPPLIER undertakes to assist R+H in the search for or qualification of spare parts and to bear the associated costs.

8.4 The SUPPLIER agrees to take out and maintain liability insurance at its own expense with a financially sound and reputable insurance company, which includes liability for ongoing and completed work as well as product liability (including the development, manufacture and sale of the products), covering personal injury, material damage, consequential damage and pure financial loss, in order to cover its liability towards R+H, customers of R+H or third parties.

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## **9. CONFIDENTIALITY**

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9.1 It is pointed out that the term "Confidential Information" refers to documents, data blocks, information media and information of any kind, whether strategic, economic, commercial, scientific, organisational or IT-specific, whether technical or non-technical – irrespective of whether written or verbal information, whether confirmed in writing or not, provided by R+H on data carriers or in printed form, or which may come to the knowledge of the SUPPLIER during performance of the contract. The term "Confidential Information" also refers to studies or analyses that may be carried out by the SUPPLIER based on the confidential information, and results that are generated by the SUPPLIER for R+H in accordance with the contract.

9.2 The SUPPLIER undertakes to maintain the confidentiality of the information and not to disclose or make it available to third parties without the prior written consent of R+H, unless

a court or supervisory authority issues an interim injunction in this respect. To this end, the SUPPLIER undertakes

- a) not to disclose confidential information and to take all necessary precautions to keep it safe,
- b) to disclose confidential information only to staff members (employed or other) who must have access to confidential information on a strict need-to-know basis to perform their official duties,
- c) to ensure that this confidentiality agreement is strictly observed by the SUPPLIER's employees.

9.3 The provisions of this confidentiality agreement shall remain in force during the term of the agreement and for the following five (5) years. After expiry or in the event of premature termination of the agreement, the SUPPLIER also undertakes to return all documents of the agreement relating to confidential information to R+H. Under no circumstances may copies of these documents remain with the SUPPLIER, its employees or subcontractors.

9.4 The SUPPLIER may not make public the business relationship between the parties through advertising or in any other way without prior written consent by R+H.

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## **10. FORCE MAJEURE**

10.1 "Force majeure" shall mean all events which are regularly cited by German courts or which are beyond the control of the parties and which are regarded as unforeseeable, unavoidable and insurmountable and were not known upon acceptance of the purchase order or which prevent fulfilment of the contract by one of the parties in whole or in part. Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force majeure event.

10.2 The party whose performance is affected by a force majeure event shall immediately inform the other party of such an event but no later than three (3) days from becoming aware of the force majeure event. In this case, the parties shall liaise with each other promptly and do everything possible to reduce the effects of the force majeure event.

10.3 If one of the parties is prevented from or affected in the performance of its contractual obligations due to one of the causes mentioned above, or is likely to be prevented or affected for a continuous period of one (1) month, each party shall be entitled to terminate the agreement with a written notice of ten (10) days.

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## **11. LEGAL PROVISIONS**

11.1 The SUPPLIER undertakes to comply with all applicable rules, in particular with regard to employment, working conditions, employees' health and safety and the fight against illegal employment.

11.2 The SUPPLIER undertakes to comply with all applicable regulations regarding the environmental impact of its activities and, more generally, regarding environmental compatibility - in an effort to prevent damage to the natural environment and ecosystems.

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## **12. SUBCONTRACTING**

12.1 The SUPPLIER may only assign, transfer or pass on all or some of its contractual rights after receiving R+H's written consent. Similarly, the SUPPLIER may only pass on or otherwise transfer all or some of its contractual obligations to third parties if R+H has given its prior written consent.

12.2 Notwithstanding any consent given by R+H to a subcontractor, the SUPPLIER shall be solely liable for the complete fulfilment of the agreement in accordance with the contractual terms, including warranty and compensation claims, and shall ensure that its subcontractors comply with the obligations accordingly.

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### **13. TERMINATION**

13.1 R+H shall be entitled to terminate the agreement, in whole or in part, at any time and without taking legal action, in the event the SUPPLIER is in breach of any of its obligations hereunder and fails to remedy the breach within thirty (30) days after receiving a written reminder thereof by registered letter from R+H.

13.2 R+H shall be entitled to immediately terminate the contract by giving notice to the SUPPLIER in the following cases: (a) liquidation or bankruptcy of the SUPPLIER unless the receiver expressly requests performance of the agreement; (b) unlawful assignment of the agreement to a third party.

13.3 Upon termination and at the request of R+H, the SUPPLIER undertakes to (a) provide R+H with all unfinished work, namely source software programs, design studies and development files in progress together with other documents that R+H may have provided for the execution of this work; (b) support R+H in the proper transfer of unfinished work and enable R+H to protect its rights on any unfinished work. The costs for the transfer of the work in progress shall be settled by mutual agreement.

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### **14. MISCELLANEOUS**

14.1 A waiver of rights by a party in the event of a breach of its respective contractual obligations shall not be understood as a waiver of rights in respect of any subsequent breach of the same or another provision. Notwithstanding the aforementioned provision, any failure of R+H to respond to a question or notification by the SUPPLIER in relation to a delay in delivery shall not affect R+H's right to impose a penalty under the terms of this agreement.

14.2 If any provision of this agreement should become invalid, such provision shall be severed and the remainder of the agreement shall continue in full force and effect. The parties shall immediately agree on a valid provision that replaces the invalid provision, and the effect of which is as close as possible to the intended effect of the invalid provision.

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### **15. REACH Regulation**

For all services, substances, preparations or other products supplied, the SUPPLIER shall comply with the stipulations and measures resulting from Regulation (EC) No. 1907/2006 REACH (Registration, Evaluation and Authorisation of Chemicals) of June 1, 2007, as amended from time to time.

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### **16. RoHS Directive**

The SUPPLIER warrants that the deliveries and services to be provided by the SUPPLIER under a purchase order comply with RoHS (Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment) requirements, and thus meet the limits existing at the time of delivery in connection with the RoHS Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (EC Directive 2002/95/EC). In the event of non-RoHS compliant deliveries, the SUPPLIER shall indemnify R+H for all damage resulting from the deliveries, irrespective of any warranty claims due.

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## **17. Respecting Human Rights**

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17.1 The SUPPLIER shall treat people with respect and fairness and observe basic human rights set forth, for example, in the Universal Declaration of Human Rights of the United Nations and the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy of the International Labour Organisation (ILO) of the United Nations.

17.2 This includes, but is not limited to, the prohibition of forced or child labour, the provision of reasonable wages, social benefits, working hours, freedom of association and other fair working conditions in compliance with applicable laws.

17.3 The SUPPLIER undertakes to maintain an environment that tolerates no reprisals, discrimination or harassment or any other improper conduct due to gender, age, race, skin colour, ethnicity or national origin, citizenship, religion or religious beliefs, physical or mental disability, veteran status, sexual orientation or any other characteristics protected by applicable law.

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## **18. APPLICABLE LAW AND PLACE OF JURISDICTION**

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18.1 Unless otherwise agreed, these GPC and the purchasing and sales transactions referred to therein shall be governed by German law and shall be construed accordingly (excluding, however, the United Nations Convention on Contracts for the International Sale of Goods).

18.2 If the SUPPLIER has its registered office in Germany, any legal disputes which cannot be settled amicably shall be decided by the competent courts in the district of the Bamberg Court of Appeal - even if a third party is involved in proceedings or in actions by or against several parties.

18.3 If the SUPPLIER's place of business is not Germany, any dispute which cannot be amicably resolved, shall be settled definitively in accordance with the Arbitration and Conciliation Rules of the International Chamber of Commerce by a sole arbitrator appointed in accordance with said rules. The place of arbitration shall be Bamberg, Germany and the proceedings shall be conducted in the German language. The award of such arbitration shall be final and binding.

Rupp + Hubrach Optik GmbH

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