

General Terms and Conditions of Purchase

for the purchase of systems, trades, assembly services and components
(as at 9/2023)



1. Version / Scope of application

- 1.1. All - including future - enquiries, orders, purchases and other legal transactions and services by SIBA are governed exclusively by the following Terms and Conditions of Purchase. The contractor expressly acknowledges that SIBA hereby objects to all deviating provisions in an order confirmation or in other business documents of the contractor. Deviating terms and conditions of the contractor and agreements that deviate from these Terms and Conditions of Purchase will only be valid if expressly agreed in writing. The acceptance of deliveries and services or their payment shall not constitute consent to the Contractor's terms and conditions.
- 1.2. These Terms and Conditions of Purchase shall also apply as a framework agreement for all further legal transactions with the Contractor. If there is an e-commerce agreement, these Terms and Conditions of Purchase shall be a supplement to the e-commerce agreement.
- 1.3. In the event of contradictions in the contractual bases, the following order shall apply:
 - special agreements (e.g. supply contract, quality assurance agreement, etc.), insofar as these have been confirmed in writing by SIBA
 - These terms and conditions of purchase
 - Dispositive standards of commercial and civil law

2. Offer, order, contract

- 2.1. Offer: In its offer, the Contractor must adhere exactly to the tender/request with regard to the quantity and quality of the goods to be delivered and, in the event of deviations, expressly point this out in writing in advance. If the Contractor fails to provide this written notification, it shall not be entitled to any higher remuneration in the event of deviations. The contractor will immediately check requests for quotations and SIBA orders for obvious errors, ambiguities, incompleteness and unsuitability of the specifications chosen by SIBA for the intended use and will inform SIBA accordingly. All offers made by the contractor are binding and free of charge. No remuneration will be paid for visits or other pre-contractual services unless remuneration has been agreed in writing or is required by law.
- 2.2. Orders: Only orders placed in writing (including fax and e-mail) are valid. Agreements made verbally or by telephone must be confirmed in writing in order to be binding on SIBA. Deviations from the order in the contractor's order confirmation have no effect. SIBA is bound by its order for a fortnight.
- 2.3. SIBA may demand reasonable changes to the design and execution of the delivery item. The effects with regard to any additional or reduced costs are to be regulated appropriately and by mutual agreement.
- 2.4. Delivery call-offs based on a framework order or call-off planning shall become binding if the Contractor does not object within two working days of receipt, unless otherwise stipulated in any e-commerce agreement concluded.

3. Obligations of the contractor

- 3.1. Written notification of the responsible contact persons of the contractor;
- 3.2. Compliance with the laws and regulations on the respective construction site, in particular with regard to national technical norms, standards, taxes, licences, customs duties, registrations, etc;
- 3.3. Compliance with a professional standard of care, as the contractor's deliveries and services become part of the overall plant to be erected by SIBA or an existing plant;
- 3.4. Procurement and consideration of all information that could determine and influence the plant, environmental and process engineering conditions for the contractor's deliveries and services, particularly with regard to its interfaces. After consultation with SIBA, an on-site inspection of the respective plant can also take place. The Contractor shall specify its interfaces in the respective specifications;

- 3.5. Compliance with the relevant quality management and environmental management standards by providing evidence of current certificates for itself and its subcontractors. SIBA reserves the right to audit the quality and environmental management system of the Contractor and its subcontractors at agreed times for compliance with standards and, if necessary, to demand corrective and preventive measures from the Contractor;
- 3.6. If the Contractor provides its services in countries with minimum wage regulations, it undertakes to comply with these regulations. The Contractor guarantees the continuous and timely payment of the minimum wage. If the contractor uses a subcontractor to fulfil his contractual obligations, he is also obliged to oblige this subcontractor to comply with the minimum wage regulations. The contractor shall indemnify SIBA on first demand against all claims, fines, penalties and costs resulting from a claim against SIBA under the relevant provisions.

4. Prices

- 4.1. The agreed price shall include all deliveries, services, documentation and financing costs to be provided in accordance with the agreed terms and conditions etc.. This includes in particular all costs for packaging, customs, insurance and other transport costs or shipping expenses, including the costs of a transport licence. The prices are fixed all-inclusive prices that cannot be increased for any reason whatsoever.
- 4.2. The same conditions and discounts apply to authorised order extensions and supplements as for the main order.

5. Invoice and payment

- 5.1. Invoices must comply with the statutory provisions, in particular the Value Added Tax Act and any separate agreements made; invoices must always include the complete order number and the order/contract date. The Contractor shall be liable for any additional or consequential costs resulting from incorrect or incomplete invoicing.
- 5.2. Payment deadlines are based on the agreed payment schedule. Payment does not constitute recognition of the correctness of the delivery or a waiver of any claims whatsoever. The contractor is prohibited from assigning claims against SIBA to third parties unless SIBA agrees to the assignment in writing.
- 5.3. If the contractor fails to fulfil the contract, SIBA is entitled to withhold payment until the contract has been fulfilled in accordance with the contract. SIBA is entitled to offset payments due against counterclaims arising from the business transaction in question and from other SIBA business transactions.
- 5.4. The final payment will only be released after a final invoice has been sent on the agreed terms and after all agreed conditions have been met.

6. Change request procedure

If, in the course of fulfilment of the contract, services outside the contractor's agreed scope of performance and delivery are required, the contractor must expressly inform SIBA in writing in advance of any additional claims. Changes and/or events affecting the scope of services and delivery must be submitted to SIBA for a decision in good time, stating the cause, effects and necessary measures. This means that any changes that may affect costs, the contract and/or deadlines must always be approved in writing by SIBA and will only be recognised if this has been obtained.

7. delivery

All deliveries shall be made in accordance with Incoterms® 2020: DDP SIBA, Gewerbestraße 7, A-4762 St. Willibald, unless another specific destination is stated in the invitation to tender/order form. Ownership of the scope of delivery and services is transferred to SIBA upon handover.

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8. Dates

- 8.1. All delivery times and deadlines are binding according to the schedule. The acceptance of late deliveries is always subject to the reservation of all claims by SIBA. Partial deliveries or earlier deliveries require written authorisation for dispatch from SIBA. Early deliveries do not give rise to earlier payment claims. In the event of early delivery, SIBA reserves the right to charge the contractor for the associated costs (warehouse hire etc.). Receipt of the goods at the place of receipt or use specified by SIBA or the timeliness of successful acceptance is decisive for compliance with the delivery date or delivery period. The acceptance of goods delivered late is always subject to the reservation of all possible claims. Postponements on the part of SIBA are free of charge. SIBA is also entitled to interrupt the respective contractual relationship at its own discretion at any time and without giving reasons. In such a case, deadlines will be adjusted accordingly. The contractor will take the necessary measures to enable the work to be resumed as quickly as possible once SIBA has given its renewed approval. In such a case, the Contractor shall immediately inform SIBA of the consequences and the actual direct costs incurred as a result. The additional direct costs arising from the suspension must be proven by the Contractor and borne by SIBA. Any further claims, on whatever legal grounds, are excluded.
- 8.2. The contractor can only invoke the absence of necessary documents to be supplied by SIBA if he has sent a written reminder for the supply of the documents and has not received them immediately; in this case, there is no delay in delivery as long as SIBA is in default with the supply of the documents. The burden of proof for this lies with the contractor. SIBA has the right to use software that is part of the scope of delivery of the product, including its documentation, to the extent permitted by law. In addition, SIBA has the right to use such software - including documentation - with the agreed performance features and to the extent necessary for the contractual use of the product. The creation of a backup copy is also permitted without express consent. The same applies to any existing industrial property rights in connection with the use of the product.
- 8.3. Should the delivery dates agreed in the order change for reasons not attributable to the Contractor, the Contractor agrees to store the goods properly for up to 3 months at the Contractor's expense and risk on behalf of SIBA. Any payments affected by this can be made against a declaration of transfer of ownership of materials and/or a bank guarantee, etc. in accordance with special agreements to be made.
- ## 9. Contractual penalty
- 9.1. Unless otherwise agreed, all agreed deadlines are subject to the following contractual penalty:
1% per commenced week of delay; however, a maximum of 10% of the order value. SIBA is entitled to withhold an amount corresponding to the contractual penalty from the contractually agreed total price. Furthermore, SIBA is free to withdraw from the contract if the contractor is at fault. The contractor shall not be entitled to any claims whatsoever against SIBA as a result of such a cancellation. Other claims for compensation over and above the contractual penalty for all damage and detrimental consequences of any kind caused by the delay remain unaffected by this.
- 9.2. Contractual penalties in the event of non-achievement of warranted characteristics/services/performance data can be defined in the technical specifications or supplements.
- 9.3. It is not necessary to reserve the contractual penalty at the time of acceptance; rather, it can still be asserted until the final payment, in particular a deduction from the final invoice is possible. Contractual penalties for interim deadlines can be deducted from instalments.

10. Shipping

- 10.1. A delivery note must be enclosed with each consignment. The Contractor shall be liable for all damage, costs, demurrage, etc. arising from non-compliance with this provision. Without appropriate shipping documents, the delivery will not be accepted but will be returned at the Contractor's expense and risk. The delivery must be packed appropriately and with the correct means of transport; in particular, the SIBA shipping instructions must be observed. Any damage resulting from non-compliance with such instructions shall be borne by the contractor.
- 10.2. Partial deliveries are only permitted with SIBA's written consent, otherwise SIBA may refuse to accept them. In any case, partial deliveries are not to be regarded as independent transactions and must be labelled in writing, stating the total quantity and the quantity of the partial delivery.

11. Order documents

All information, drawings and other technical documents provided to the contractor by SIBA for the manufacture of the delivery item or which the contractor has produced in accordance with SIBA's specific instructions may not be used, reproduced or made accessible to third parties by the contractor for purposes other than for manufacture on the basis of the order in question. The aforementioned documents remain the sole property of SIBA and must be returned to SIBA immediately on request, together with copies and reproductions. The processing of materials and the assembly of parts are carried out for SIBA. SIBA will become co-owner of the products manufactured using materials and parts in the ratio of the value of the materials provided to the value of the overall product, which will be stored by the contractor for SIBA. If, for whatever reason, delivery does not take place, the contractor must return all documents immediately without being requested to do so or archive them, guaranteeing that they will not be used improperly. The orders and the work relating to them are to be regarded as business secrets and must therefore be treated confidentially. The contractor is liable for all damages incurred by SIBA as a result of a breach of one of these obligations. The contractor is only permitted to mention or refer to the existing business relationship in advertising material and publications of any kind with SIBA's express written authorisation.

12. Liability

The Contractor and SIBA shall be liable in accordance with the statutory provisions; however, liability for loss of profit is excluded.

13. Discount on liability

Unless otherwise agreed on a project-specific basis, the liability retention amounts to 10% of the total amount (retention on final invoice) and can be covered by an abstract bank guarantee amounting to 10% of the order value plus statutory VAT, with a term of 2 months over the warranty period. The retention will be retained for the entire warranty period.

14. Completeness clause

The Contractor's delivery/service obligation, including documentation, includes all parts and services customary in the industry or belonging to the ordered delivery according to the context, even if these are not expressly listed. Completeness shall be understood to mean in particular that the functionality of the ordered components is guaranteed for the required purpose under the operating conditions, influences, safety regulations, applicable standards and official regulations etc. to be expected at the place of use.

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15. Transfer of risk

In deviation from any Incoterms® 2020 used, the transfer of risk and risk to SIBA takes place upon acceptance by the end customer.

16. Documentation

- 16.1. Documentation within the meaning of the order is all written, graphic and computerised documents (including source code and production drawings) that are specified in order to ensure all activities associated with the proper, timely installation and operation of a system component.
- 16.2. The documentation must be submitted in electronic form to the extent described in the order and its enclosures.
- 16.3. If there are any changes to the order, these must be added immediately to all technical documents and the documentation by the contractor, so that an overall corrected final documentation is guaranteed.
- 16.4. If CE labelling is required for the deliveries and services, this must demonstrably and verifiably comply with all relevant statutory provisions (in particular the CE Directive) and all standards in the latest valid version.
- 16.5. The Contractor shall enclose any valid proof of preference (certificate of origin etc.) free of charge with the goods to be delivered in cross-border traffic.

17. Acceptance

- 17.1. The acceptance of the services takes place in connection with the final acceptance by the end customer. An exact definition of the acceptance procedure shall be jointly defined in writing as part of the preparation of the specifications on the basis of the requirements specification. In any case, the Contractor must provide evidence of all data, services and functions specified in the offer and the annexes attached to the contract as part of the acceptance procedure. This must be recorded in an acceptance report.
- 17.2. In principle, acceptance can only take place under the following conditions:
 - fulfilment of all deliveries and services of the contractor in accordance with the order;
 - Proper and complete delivery of all documentation;
 - The existence of a protocol signed by both parties stating that the trial operation including proof of performance for the entire system has been successfully completed.
- 17.3. If defects are identified that do not affect the function of the system, acceptance may be granted subject to the immediate rectification of these defects. If the remaining points are not dealt with on time, the declaration of acceptance shall be deemed not to have been issued retroactively.
- 17.4. If it becomes apparent during acceptance that the system has not been manufactured in accordance with the contract and/or does not fulfil the required performance, the Contractor must request a repeat of the acceptance date within a period of grace to be agreed. If the contractually agreed services are again not fulfilled at the repeat acceptance, in particular if the guaranteed performance data are not demonstrated, the contract shall be deemed not to have been fulfilled.

18. Guarantee

- 18.1. The Contractor guarantees that the deliveries/services will be carried out completely and in accordance with the order or delivery call-off and are suitable for the intended use; furthermore, that the design, practicality, production technology and the warranted properties correspond to the latest state of the art, are manufactured in accordance with the applicable regulations, that new material of first-class and suitable quality is used and that the ordered item is free of defects. Furthermore, the contractor guarantees the achievement of and reliable compliance with all contractually agreed performance values. The contractor must demonstrably draw SIBA's attention to all risks that can normally be expected when using the product. The contractor is liable in the same way for the goods and components supplied by him but not produced by him or the services provided.

- 18.2. Unless otherwise agreed, the warranty shall end 24 months after final acceptance of the entire system and rectification of all defects, irrespective of the period of operation. The warranty includes material, labour and all other costs. In the event of a hidden defect, the warranty period shall not commence until the defect is objectively recognisable. In the case of goods that are usually left packaged until they are used, defects that only become visible when they are removed from the packaging are deemed to be hidden defects.
- 18.3. SIBA is not obliged to inspect the goods and report any defects (including quantity defects); the application of Sections 377 and 378 of the Austrian Commercial Code (UGB) is hereby expressly waived.
- 18.4. SIBA is entitled, at its own discretion, to demand that the Contractor rectify any defects occurring during the agreed warranty period at its own expense and risk by means of improvement (repair, addition of the missing item) and/or replacement at short notice, or to claim a price reduction, declare cancellation of the contract or rectify defects or non-performance or defective performance itself or, if the complaint is unsuccessful or in the event of imminent danger, to rectify, perform or have rectified or performed by third parties at the Contractor's expense and risk.
- 18.5. In the event of a warranty claim, the Contractor shall bear the burden of proof that the defect did not exist at the time of delivery for the entire warranty period.
- 18.6. In the event of defects of any kind whatsoever, SIBA is in any case entitled to withhold the entire outstanding purchase price or remuneration until the defect has been fully remedied.
- 18.7. In the event of rectification or replacement of defective parts, the period shall recommence upon successful resumption of operation of the part concerned. Any interruption of operation caused by the Contractor during the period shall result in a corresponding extension of the period.

19. Declaration of exemption

The Contractor is obliged to ensure compliance with all insurance and tax requirements and labour law provisions applicable in the country where the construction site is located with regard to the employees deployed on the construction site and must fully indemnify and hold SIBA harmless in this respect.

20. Product liability

- 20.1. The contractor must enclose instructions for use and warnings in German with his delivery and, where possible and reasonable, attach them to the delivered goods himself. If, after acceptance of the delivery by SIBA, it becomes apparent that the delivered goods are defective and/or it is recognised that the properties of the product no longer correspond to the state of the art in science and technology within the meaning of § 8 Z 2 PHG, the contractor undertakes to take back such goods and to refund the purchase price in full.
- 20.2. If a claim is made against SIBA due to a defect in its product or, in particular, due to a breach of official safety regulations or due to domestic or foreign product liability regulations, SIBA is entitled to demand compensation from the contractor for this damage insofar as it is attributable to the products supplied by the contractor. The contractor undertakes to fully indemnify SIBA for all resulting claims. This indemnification also includes the costs of a replacement as well as the costs of a precautionary and necessary recall action.
- 20.3. If a claim is made against SIBA for services provided by the contractor, the contractor undertakes at his own expense to hand over without delay any evidence requested by SIBA, such as in particular quality and inspection reports, certificates and the like.

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21. Industrial property rights/copyrights

21.1. The Contractor declares that his scope of supply and services and the documentation and drawings supplied by him do not infringe any industrial property rights (patent rights, trademark rights, design rights, copyrights, equipment rights, product designations, know-how, territorial protection and rights of a similar nature, even if an application has been made for the granting of such rights). The Contractor shall be liable for all consequences resulting from a breach of these provisions and shall indemnify and hold SIBA fully harmless against claims by third parties.

21.2. Without prejudice to further rights, SIBA is entitled in such a case to refuse acceptance until the justification of the asserted claims has been clarified, to make goods that have already been accepted available to the contractor again at the contractor's expense and to withhold payment of the entire purchase price.

22. Non-solicitation clause

22.1. The Contractor is prohibited from directly or indirectly enticing away SIBA employees or offering them direct or indirect employment (both hereinafter referred to as "enticement") without prior written authorisation.

22.2. Should the Contractor fail to comply with this point, he shall pay a contractual penalty corresponding to the gross annual salary (calculated as in the case of severance pay pursuant to Section 23 of the Austrian Labour Relations Act) paid by SIBA to the headhunted employee in the last year of employment; in the case of a shorter contract term, the extrapolated gross annual salary.

23. Insurance

The contractor undertakes to maintain public liability insurance with sufficient cover for the duration of the order processing, including the duration of the warranty periods. The contractor will provide SIBA with a confirmation of insurance cover in this respect before the contract is concluded without being asked to do so.

24. Force majeure

Force majeure and labour disputes shall release the contracting parties from their performance obligations for the duration of the disruption and to the extent of its effect. The contracting parties are obliged to provide the necessary information without delay within the scope of what is reasonable and to adjust their obligations to the changed circumstances in good faith. If a circumstance lasts longer than two months and no amicable solution can be reached between the parties, both parties have the right to withdraw from the contract in whole or in part.

25. Cancellation of the contract

If the Contractor fails to fulfil his contractual obligations in whole or in part (e.g. also default in the case of intermediate deadlines in the planning and production process and in the case of dependent ancillary services), SIBA is entitled to withdraw from the contract in whole or in part after setting a reasonable grace period to no avail and irrespective of any divisibility of the service. With regard to any grace periods, the actual granting of such a grace period, e.g. through repeated reminders, is sufficient for SIBA to comply with the contract. In particular, in the event of non-fulfilment of warranted characteristics, SIBA is entitled to withdraw from the contract in its entirety, irrespective of the divisibility of the services. This also applies in the event of a significant deterioration in the contractor's financial situation. Amounts already paid for the services affected by the cancellation of the contract must be repaid plus the financing costs incurred by SIBA. The contractor himself shall not be entitled to any claims whatsoever against SIBA as a result of such cancellation. The contractor is obliged to inform SIBA of such circumstances immediately.

26. Cancellation

26.1. SIBA has the right to withdraw from the contract in whole or in part at any time, even if the Contractor is not at fault.

26.2. In such a case, SIBA is obliged to pay the contractor the contract price in proportion to the services already provided or rendered and also to reimburse the proven direct costs of deliveries/services already in progress or the cancellation of subcontracts. Upon payment, the Contractor shall transfer ownership of the deliveries/services concerned; the burden of proof for the existence of the aforementioned costs shall be borne by the Contractor. Following notification of cancellation, the Contractor shall make every possible and reasonable effort to keep the direct costs to be reimbursed by SIBA as low as possible.

27. Contract amendment

Any amendments or corrections to the contract must be made in writing in order to be valid. This also applies to any waiver of the written form requirement.

28. Assignments / subcontracting

In the event of significant circumstances, such as a relocation of the production site, SIBA is entitled to prohibit the transfer of the order with immediate effect and to demand fulfilment of the contract from the contractor.

29. Secrecy

29.1. The Contractor may have access to certain proprietary and confidential information of SIBA and its customers. Therefore, the Contractor hereby agrees to keep such information confidential and not to use or disclose such information to any third party for any purpose other than the performance of this Agreement.

29.2. All existing confidentiality agreements between SIBA and the contractor remain in full force and effect. The contractor agrees to compensate SIBA for all damages and costs arising from the breach of its confidentiality obligations.

30. Prohibition of direct contact with the customer

30.1. During the period of use of a system handed over by SIBA to the customer, the supplier undertakes not to contact the customer directly with regard to business activities in connection with this system without SIBA's written consent or to pass on any orders from the customer in connection with the system to SIBA and to refer the customer to SIBA with the award of the order. This obligation extends to all affiliated and dependent companies of the supplier via the majority shareholding.

30.2. The supplier undertakes to pay a contractual penalty of EUR 100,000.00 for each breach of this provision. The supplier cannot exempt himself from compliance with the above provision by paying this contractual penalty. SIBA is entitled to claim damages from the supplier in excess of the contractual penalty amount.

31. Data protection

SIBA would like to point out that the contractor's data will be computerised and used only for the purpose of the contract.

32. Compliance

The Contractor undertakes to comply with the Code of Conduct. This Code of Conduct is an integral part of these Terms and Conditions of Purchase.

33. Customs / Export control

The contractor is obliged to inform SIBA in his business documents of any obligations to obtain authorisation for re-exports of his goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of his goods.

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To this end, the contractor shall provide the information required and necessary for this in accordance with the relevant customs and export regulations at least in his offers, order confirmations and invoices for the relevant goods items. At SIBA's request, the contractor is obliged to inform SIBA in writing of all other foreign trade data relating to his goods and their components and to inform SIBA immediately (before delivery of the goods concerned) in writing of any changes to the above data.

34. Spare parts range

The Contractor guarantees a supply of spare parts for a period of at least 10 years. The fixed price of the spare parts offer may not be less than 18 months.

35. Place of fulfilment, choice of law and place of jurisdiction

- 35.1. For all rights and obligations arising from the legal transactions concluded with SIBA, the place of fulfilment for both parties is the specified construction site address or, in the absence of such designation, the registered office of SIBA in St. Willibald, Austria.
- 35.2. This agreement shall be governed exclusively by Austrian substantive law. The conflict of laws rules of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) are hereby expressly excluded.
- 35.3. The competent court in Schärding shall have exclusive jurisdiction for all disputes arising from or in connection with this contract.
- 35.4. However, SIBA is entitled, at its own discretion, to sue the Contractor in any other court that may have jurisdiction under national or international law.

36. Severability clause

In the event that one or more provisions of this agreement are or become void or ineffective, the contracting parties shall be obliged to agree on a legally effective provision that comes as close as possible to the economic purpose of the void or ineffective provision. This also applies to loopholes in the agreement. This shall not affect the validity of the remainder of the contract.

37. Final provisions

- 37.1. The headings of the provisions contained in these General Terms and Conditions of Purchase are for convenience only and shall not be used for interpretation.
- 37.2. No course of dealing between the Contractor and SIBA and no delay or omission in exercising any right, remedy or remedy granted under these Conditions of Purchase shall operate as a waiver of such rights. Each right and remedy granted in these SIBA Terms and Conditions of Purchase is cumulative and coextensive with and in addition to any other rights, remedies and remedies granted by law.