

General Purchasing Conditions of VNG Handel & Vertrieb GmbH (GPC) (Version November 2021)

1. Scope of application

1.1. The following General Purchasing Conditions (hereinafter referred to as "GPC") of VNG Handel & Vertrieb GmbH (hereinafter referred to as "VNG H&V") apply to all our orders for deliveries and/or services, unless otherwise agreed. The GPC shall only apply if the Supplier/Contractor is an entrepreneur within the meaning of Section 14 BGB (Bürgerliches Gesetzbuch [German Civil Code]).

1.2. These GPC apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Supplier/Contractor shall only become an integral part of the contract if and to the extent expressly agreed to by VNG H&V. This consent requirement shall apply in any case, for example also if VNG H&V unconditionally accepts the deliveries and/or services while having knowledge of the Supplier/Contractor's General Terms and Conditions.

1.3. Individual agreements made in individual cases with the Supplier/Contractor (including ancillary agreements, supplements and changes) shall in any case take precedence over these GPC. For reasons of proof, such agreements must be documented in writing or in text form.

1.4. Legally relevant declarations and notifications that are to be submitted by the parties after the conclusion of the contract (e.g. deadlines, reminders, declaration of withdrawal) must be made in writing or in text form (e.g. email).

1.5. References to the validity of statutory provisions are for clarification purposes only. The statutory provisions apply even without such clarification, unless they are directly amended or expressly excluded in these GPC.

2. Order/Order Confirmation

2.1. Generally, orders from VNG H&V are preceded by requests to the Supplier/Contractor. Quotes from the Supplier/Contractor form the basis of negotiations that VNG H&V conducts with the Supplier/Contractor verbally, by telephone or via other means of communication.

2.2. The outcome of the negotiations or the content of the deliveries and/or services requested by VNG H&V with reference to these GPC shall be documented in writing or in text form by VNG H&V in an order, which shall be sent to the Supplier/Contractor by post or other means of transmission (e.g. fax, email). This order constitutes the offer in the legal sense and must be checked immediately by the Supplier/Contractor, who must immediately inform VNG H&V of any discrepancies or errors in writing or text form.

2.3. This order must be confirmed by the Supplier/Contractor within 14 calendar days after receipt in a legally binding manner and without changes or additions on a copy of the order. This order confirmation must be returned to VNG H&V by post, fax or email and represents the acceptance of the offer in the legal sense. This results in a contract between VNG H&V and the Supplier/Contractor. Subject to the provision in Clause 2.6, the contract shall only be deemed to have been concluded if VNG H&V is in possession of the order confirmation signed by the Supplier/Contractor.

2.4. By signing the order confirmation, the Supplier/Contractor acknowledges these GPC, which shall become an integral part of the contract when the order is issued.

2.5. Changes or additions deviating from the content of the order shall only be effective if they are confirmed by VNG H&V in writing or in text form.

2.6. If the Supplier/Contractor executes the order without the order confirmation having been received by us within the period specified in Clause 2.3, the execution of the order shall be deemed to be acceptance in the legal sense and recognition of our GPC.

2.7. If necessary, confidentiality agreements, agreements on order processing and IT security shall be concluded separately and included in the contract if necessary.

2.8. Subcontractors of the Supplier/Contractor may only be used if VNG H&V has previously agreed to this in writing or in text form. In this case, subcontractors are vicarious agents of the Supplier/Contractor. The Supplier/Contractor shall ensure that subcontractors comply with the provisions of the GPC to the same extent as the Supplier/Contractor itself. VNG H&V is entitled to an unrestricted review of the subcontractor's performance.

3. Performance and delivery deadlines and delay in delivery

3.1. The agreed delivery and performance dates must be adhered to. If the Supplier/Contractor realises that he cannot comply with the delivery/performance date, it must inform VNG H&V immediately so that VNG H&V can make any arrangements in a timely manner. The rights of VNG H&V due to the default remain unaffected by this.

3.2. If the Supplier/Contractor fails to provide its service and/or deliver or fails to do so within the agreed time of delivery or performance or if it is in default, the rights of VNG H&V – in particular to withdraw from the contract and to claim damages – shall be determined in accordance with the statutory provisions. The provisions in Clause 3.3 remain unaffected by this.

3.3. If the Supplier/Contractor is in default, VNG H&V is entitled to demand – in addition to further statutory claims – the lump-sum compensation of the default damage of VNG H&V in the amount of 0.2% of the net price per calendar day, but in total not more than 5% of the net price of the late delivery of goods or late performance of services. VNG H&V reserves the right to prove that it has incurred greater damages. The Supplier/Contractor reserves the right to prove that VNG H&V has not incurred any damage at all or only significantly less damage.

4. Transfer of risk and delay in acceptance

4.1. The risk of accidental loss and accidental deterioration is transferred to VNG H&V upon handover of the delivered goods at the place of performance, unless otherwise agreed. If acceptance is agreed, this is decisive for the transfer of risk.

4.2. The statutory provisions shall apply to the occurrence of a delay in acceptance by VNG H&V. However, the Supplier/Contractor must also expressly offer its service to VNG H&V if a specific or determinable calendar time has been agreed for an action or collaboration of VNG H&V (e.g. provision of material). If VNG H&V device is in default of acceptance, the Supplier/Contractor may demand reimbursement of its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a non-reproducible item to be manufactured by the Supplier/Contractor (customised product), the Supplier/Contractor shall only be entitled to additional rights if VNG H&V undertakes to cooperate and is responsible for the failure to cooperate.

5. Shipping documents

A copy of a delivery note must be attached to each shipment. The date, the order number and the item numbers assigned to the articles must be specified in the shipping documents.

6. Invoicing and payment

6.1. Invoices must be submitted separately for each order to VNG H&V after delivery and/or performance has taken place, stating the date and the order number as well as the item number and the account. They must be submitted in PDF format by email to ServiceCenterRechnungswesen@vng-handel.de. They may not be attached to the shipments.

6.2. Invoices must meet the legal requirements. The tax number, net amount, applicable VAT rate, VAT amount and gross amount must be shown separately on the invoices.

6.3. Payment shall be made using the means of payment chosen by VNG H&V. Payments shall be due within 30 calendar days of complete delivery and/or performance (including any necessary acceptance) and receipt of a proper invoice. In the event of payment within 14 days after delivery and receipt of invoice, VNG H&V is entitled to deduct a discount of 2% of the invoice amount. In the event of a bank transfer, payment shall be deemed to be made in a timely manner if the transfer order from VNG H&V is received by the bank of VNG H&V before the expiry of the payment deadline; VNG H&V is not responsible for delays by the banks involved in the payment process.

6.4. VNG H&V shall be entitled to offsetting and retention rights as well as objection to non-performance of the contract to the legal extent. VNG H&V is in particular entitled to withhold payments due as long as VNG H&V is still entitled to claims from incomplete or defective deliveries and/or services against the Supplier/Contractor.

6.5. The Supplier/Contractor has a right of offsetting or retention only on the basis to legally established or undisputed counterclaims. A right of retention of the Supplier/Contractor is excluded, unless it is based on the same contractual relationship.

6.6. VNG H&V does not owe any default interest. The interest rate on arrears is 5% above the annual base interest rate. In the event of default on the part of VNG H&V, the statutory provisions shall apply, whereby a reminder by the Supplier/Contractor shall be required in each case, if applicable, in derogation thereof.

7. Guarantees

At the request of VNG H&V, guarantees must be submitted according to the specifications of VNG H&V. Unless otherwise agreed, guarantees are to be submitted for an unlimited period of time, waiving the defences under sections 770, 771 and 772 BGB. The exclusion of the defence of set-off applies only if the counterclaim of the Supplier/Contractor is not undisputed or legally established. In the case of a contract performance guarantee, this must be submitted with the acceptance of the order in the amount of 10% of the net order value. The guarantee shall be returned after successful acceptance or acknowledgement of the final invoice. In the case of a warranty bond/guarantee for claims for defects, this must be submitted with the final invoice in the amount of 5% of the net total invoice value. Insofar as the warranty bond is used in whole or in part during the warranty period, the Supplier/Contractor shall be obliged to supplement the amount claimed in each case immediately by means of a corresponding guarantee. The return of the guarantee shall take place after expiry of the warranty period, insofar as any warranty claims made up to that point have been fulfilled and insofar as the limitation period of the warranty claims has not been suspended (e.g. Sections 203, 204 BGB).

8. Assignment of claims

The Supplier/Contractor shall not be entitled to assign its claims against VNG H&V in whole or in part or have them collected by third parties without the prior written consent of VNG H&V, which VNG H&V shall not refuse without good cause.

9. Retention of title

9.1. The Supplier/Contractor shall process, mix or combine (further process) the items provided by VNG H&V on VNG H&V's behalf. This shall also apply in the event of further processing of the delivered goods by VNG H&V, which means that VNG H&V shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

9.2. The transfer of ownership of the delivered goods to VNG H&V must take place without fail and without consideration of the payment of the purchase price. However, if VNG H&V accepts in an individual case an offer of the Supplier/Contractor to transfer ownership conditional on payment of the purchase price, the Supplier/Contractor's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. In any case, all other forms of retention of title are excluded, in particular the extended, forwarded, downstream, extended retention of title and the group retention of title.

10. Warranty

10.1. The statutory provisions shall apply to the rights of VNG H&V in the event of material defects and defects of title in the deliveries and/or services (including incorrect and incomplete deliveries as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Supplier/Contractor, unless otherwise specified below.

10.2. The Supplier/Contractor warrants that its deliveries or services are completely free from material defects and defects of title, that the materials used have been selected properly and faultlessly and - unless otherwise agreed - that the work has been carried out according to the state of the art and that its services have been performed properly and professionally. The Supplier/Contractor also guarantees compliance with the agreed quality of the deliveries or services.

10.3. Any descriptions of the deliveries or services which - in particular by designation or reference in the order - are the subject matter of the respective contract or have been included in the contract in the same way as these GPC shall be deemed to be an agreement on the quality. It makes no difference whether the product description of VNG H&V comes from the Supplier/Contractor or from the manufacturer.

10.4. In the event of defects in the deliveries or services of the Supplier Contractor, VNG H&V is entitled to demand supplementary performance at the latter's expense. The Supplier/Contractor shall be entitled to two attempts to carry out the supplementary performance, within a reasonable period set by VNG H&V. If the supplementary performance also fails at the second attempt, if it is refused or impossible for the Supplier/Contractor, VNG H&V may withdraw from the contract or reduce the compensation accordingly. Insofar as the Supplier/Contractor is responsible for the defects, VNG H&V shall also retain the right to claim damages or reimbursement of expenses. In the case of a contract for work and services, VNG H&V is also entitled to remedy the defects itself or have them remedied by a third party at the expense of the Supplier/Contractor if the second deadline set by VNG H&V for supplementary performance expires without success. If supplementary performance is refused by the Supplier/Contractor without it being entitled to do so, a prior setting of a deadline is not necessary for the aforementioned self-performance. The same shall apply insofar as it is unreasonable to expect VNG H&V

to set a prior deadline due to the urgency of remedying the defect. The warranty period is two years from the date of transfer of risk or, in the case of a contract for work and services, from the date of acceptance. The warranty period is five years for deliveries and/or services of structures or items that are used for a structure in accordance with their normal use. In the case of the elimination of defects by the Supplier/Contractor, the warranty period shall be extended by the period from the complaint to the handover or acceptance of the repair. The above provisions shall apply mutatis mutandis to the replacement deliveries or improvements made within the framework of the supplementary performance.

11. Liability

The Supplier/Contractor is liable in accordance with the statutory provisions.

12. Property rights

If third parties claim that the Supplier/Contractor's deliveries and/or services violate their property rights, VNG H&V shall be comprehensively indemnified by the Supplier/Contractor upon first request and VNG H&V shall be reimbursed for any expenses incurred. VNG H&V shall inform the Supplier/Contractor immediately of such alleged infringements of property rights and leave it to the Supplier/Contractor to defend its rights.

13. Withdrawal and termination

13.1. In the event of a change in the circumstances governing the conclusion of the contract occurring prior to the fulfilment of the contract by the Supplier/Contractor through no fault of VNG H&V, VNG H&V shall be entitled to demand the fulfilment of the contract at a later date than agreed or to withdraw from the contract in whole or in part.

13.2. In the case of service and work contracts, VNG H&V is entitled to the statutory rights of termination. The right of the parties to extraordinary termination remains unaffected.

14. Advertising, publications, references

Both the production/publication of articles, films and photos in connection with the subject matter of the contract, including press releases and the mention of the company name of VNG H&V, for example as a reference, as well as the mention of VNG H&V employees by name in connection with references, is only permitted for the Supplier/Contractor if VNG H&V has agreed to this in advance in writing or in text form.

15. Data processing

15.1. VNG H&V processes personal data in accordance with the Federal Data Protection Act and the EU General Data Protection Regulation (e.g. contact details of representatives and contact persons of the Supplier/Contractor), in particular to fulfil the contractual obligations or to carry out pre-contractual measures. Furthermore, VNG H&V may process personal data within the framework of business partner reviews and such personal data that the Supplier/Contractor provides to VNG H&V within the framework of its participation in a tender or a request for quotation. Further information on data protection can be found on the homepage of VNG H&V.

15.2. In the business relationship with VNG H&V, the Supplier/Contractor undertakes to comply with all data protection regulations relevant to the EU General Data Protection Regulation and the Federal Data Protection Act, in particular to process personal data of VNG H&V employees only on a legal basis and only for a specific purpose.

16. Confidentiality

16.1. The Supplier/Contractor must treat all information and data (in particular information on operating facilities, business processes, procedures and working methods of VNG H&V), which it becomes aware of during the execution of the contract

confidentially and must not disclose it or make it accessible to third parties, unless VNG H&V has previously agreed to this in writing or in text form. The Supplier/Contractor undertakes to use the confidential information exclusively for the purpose of performing the respective contract.

16.2. This obligation continues to exist even after the end of the contract. The Supplier/Contractor shall also impose a corresponding obligation of confidentiality on the employees it deploys itself or on the employees of the sub-suppliers/subcontractors it engages within the framework of the execution of the contract and shall prove this to VNG H&V upon request.

17. Legal succession

The complete or partial transfer of contractual rights and/or obligations by the Supplier/Contractor requires the prior consent of VNG H&V (in written or text form). Such consent shall only be denied for good cause

18. Force majeure

18.1. Insofar as the Supplier/Contractor is prevented from fulfilling its obligations as a result of force majeure in accordance with Clause 18.2, it shall be released from these obligations (suspension of performance). In this case, VNG H&V shall not be entitled to any rights to disrupt performance. VNG H&V shall be released from its obligations to provide counter-performance to the extent and for as long as the Supplier/Contractor is prevented from fulfilling its obligations due to force majeure.

18.2. Force majeure is an external event which cannot be foreseen and which cannot be averted or prevented in good time even by exercising reasonably expected care and by technically and economically reasonable means. These include, in particular, natural disasters, a pandemic or epidemic as well as legal provisions or measures of the government or authorities, which make the performance of services temporarily or permanently impossible for the Supplier/Contractor.

18.3. The Supplier/Contractor must notify VNG H&V without delay and inform it about the circumstances of the force majeure and the expected duration of the suspension of performance. It shall endeavour to ensure with all technically possible and economically reasonable means that it can fulfil his obligations again as quickly as possible.

18.4. If the Supplier/Contractor uses services of third parties to fulfil its contractual obligations, an event that would represent force majeure for the third party in accordance with Clause 18.2 shall also be deemed to be force majeure for the benefit of the Supplier/Contractor.

18.5. In the event that VNG H&V and/or the Supplier/Contractor are no longer reasonably able to adhere to the contract as a result of force majeure (e.g., the task of the project for which deliveries/services of the Supplier/Contractor are necessary; imminent price increases due to inflation, etc.), the Parties shall agree on ways in which to adapt or, if necessary, terminate the contract. Each party is entitled to (partial) termination if

- a) an agreement cannot be reached within a reasonable period of time (usually within six weeks),
- b) the other party is in a situation of insolvency,
- c) an application for the opening of insolvency proceedings over the assets of the other Party has been filed or
- d) a significant deterioration of the economic circumstances of the other party occurs, in particular if

insolvency or over-indebtedness is imminent, the application to open insolvency proceedings has been rejected or the opening of insolvency proceedings has been refused.

18.6. In the event of any advance payments made by VNG H&V for ordered material deliveries (e.g. for raw materials, pre-production), the Supplier/Contractor shall be obliged to reimburse VNG H&V for half of the advance payments made.

18.7. Services provided shall be reimbursed by VNG H&V in accordance with the scope of their value (part of the agreed compensation that is attributable to the service provided).

18.8. Further claims are excluded.

19. Compliance

19.1. For the Supplier/Contractor, it is a self-evident not to tolerate, support or promote child or forced labour. In the business relationship with VNG H&V, the Supplier/Contractor shall strictly comply with all statutory provisions and ensure that any subcontractors it engages do the same. This applies in particular to the statutory provisions on occupational safety and work and environmental protection, to the statutory provisions on combating corruption, money laundering and unfair business practices as well as to ensure free competition. The Supplier/Contractor guarantees that it shall obtain and maintain all approvals and certificates necessary for the performance of the contract for its operations. The Supplier/Contractor shall refrain from direct and indirect donations, e.g. gifts, payments, rewards or other benefits, to VNG H&V or its legal representatives and vicarious agents or persons close to them, which are likely to create the appearance of corruption.

19.2. If the Supplier/Contractor has demonstrably reached an agreement on the occasion of an award or the conclusion of a contract which represents an inadmissible restriction of competition, it shall pay 5% of the net price to VNG H&V as liquidated damages, unless damages in a different amount are proven. This also applies if the contract is terminated or already fulfilled. Other contractual or legal claims of VNG H&V remain unaffected.

19.3. Inadmissible restrictions on competition are in particular anti-competitive negotiations and agreements with other applicants/bidders on the submission or non-disclosure of offers, the prices to be charged, profit mark-ups, other price components, delivery/service and other conditions, insofar as these directly influence the price, as well as recommendations, unless they are permissible under the GWB (Gesetz gegen Wettbewerbsbeschränkungen [Act against Restraints of Competition]). Such actions by the Supplier/Contractor itself are equivalent to actions by persons commissioned by it or acting on its behalf.

20. Minimum wage

20.1. With regard to the business relationship with VNG H&V, the Supplier/Contractor guarantees compliance with the AEntG (Arbeitsnehmerentendegesetz [German Act on the Posting of Workers]) as well as the continuous and timely payment of the applicable minimum wage (Section 1 of the MiLoG (Mindestlohngesetz [Act on the Regulation of a General Minimum Wage]) to its employees and shall, upon request by VNG H&V, provide proof of payment without delay by submitting suitable up-to-date documents. The Supplier/Contractor shall contractually oblige any subcontractors used by it to the same extent to comply with the above obligations. The Supplier/Contractor shall regularly check whether the engaged subcontractors comply with the MiLoG.

20.2. The Supplier/Contractor shall indemnify VNG H&V against all and any claims that are asserted in the event of a violation by the Supplier/Contractor of the MiLoG or the AEntG against VNG

H&V under the guarantor liability pursuant to Section 13 MiLoG or Section 14 AEntG. This also applies if the guarantor's liability results from the involvement of subcontractors by the Supplier/Contractor. VNG H&V shall be entitled to exercise a right of retention against due claims of the Supplier/Contractor in the amount in which VNG H&V is claimed by the Supplier/Contractor for non-payment of the minimum wage to its employees or subcontractors to their employees.

20.3. If the Supplier/Contractor violates the obligation to pay a general minimum wage from Sections 1 et seq. MiLoG, against the AEntG and/or the obligations Clause 24.1 GPC and Clause 24.2 GPC, VNG H&V shall be entitled to terminate the contract without notice for good cause. The Supplier/Contractor shall compensate VNG H&V for any damages incurred as a result of the termination.

21. Occupational safety and health

In the case of deliveries and services at VNG H&V locations, the Supplier/Contractor must observe the requirements for occupational safety and health protection. The Supplier/Contractor must ensure that its subcontractors are also equally obliged to observe such requirements.

22. Unbundling requirements

The Supplier/Contractor is aware that VNG H&V is part of a vertically integrated energy supply company and must observe certain statutory provisions pursuant to Sections 10 et seq. EnWG (Energiewirtschaftsgesetz [German Energy Industry Act]). Insofar as the Supplier/Contractor acts in an advisory or service capacity simultaneously for VNG H&V or its subsidiaries and simultaneously for ONTRAS Gastransport GmbH or its subsidiaries with regard to information technology application systems and information technology infrastructure located in business or office premises of one of the aforementioned companies, the Supplier/Contractor shall deploy natural persons for this activity at VNG H&V and its subsidiaries other than those deployed for this activity at ONTRAS Gastransport GmbH or its subsidiaries. Reference is made to the statutory provision of Section 10a para. 5 sentence 3 EnWG.

23. Place of performance

The place of performance for all deliveries and/or services of the Supplier/Contractor is the respective destination specified by VNG H&V; the place of performance for all payments is Leipzig.

24. Place of jurisdiction

The place of jurisdiction for merchants is Leipzig.

25. Invalidity of individual provisions

If individual provisions of these GPC or of the contract concluded between VNG H&V and the Supplier/Contractor are or become void, ineffective or unenforceable, without this making it impossible to achieve the objective and purpose of the entire order or making it unreasonable for a contracting party to maintain it, this shall not affect the validity of the remaining provisions. If there is no individual agreement, which must be documented in text or written form, the invalid or unenforceable provision must be replaced in this case by another provision, which fulfils the intended purpose and the economic objective of the entire order and meets the interests of the contractual partners. This shall apply mutatis mutandis if a necessary regulation has been omitted when the order is placed.

26. Applicable law

The relationships between the Supplier/Contractor and VNG H&V shall be governed exclusively by the laws of the Federal Republic of Germany International private law and the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG) do not apply.