

**TERMS & CONDITIONS****GENERAL TERMS AND CONDITIONS OF PURCHASE  
GEKA (GERMANY)**

These Terms and Conditions can be found on the Internet under [www.sulzer.com](http://www.sulzer.com).

**1. GENERAL**

1.1 These General Terms and Conditions of Purchase (hereinafter "PURCHASE TERMS") apply to all purchases (hereinafter "SCOPE OF SUPPLY") of GEKA, unless GEKA has expressly agreed otherwise in writing. "GEKA" means the company which issued the PURCHASE ORDER as defined in 1.2.2.

1.2 In case of contradiction between contract documents, i.e. the PURCHASE ORDER of GEKA plus all documents referred to therein (the said documents hereinafter called "CONTRACT"), the following order of precedence shall apply:

1. Negotiated, agreed and mutually signed document
2. GEKA'S Purchase Order (hereinafter "PURCHASE ORDER")
3. GEKA'S PURCHASE TERMS
4. GEKA'S request for offer

1.3 All documents making part of the CONTRACT can be changed only in a written, duly signed document.

1.4 GEKA may regard as binding upon the SUPPLIER, all written data and information submitted by SUPPLIER in connection with the tendering or placing of a PURCHASE ORDER process, unless such data and information is clearly marked as being non-binding.

1.5 Unless otherwise agreed, delivery shall be made DAP. Trade terms like DAP, FOB, CIF, EX WORKS etc. shall be interpreted in accordance with the INCOTERMS 2010 or, after replacement thereof, the then effective INCOTERMS.

**2. OFFERS IN REPLY TO INVITATIONS**

2.1 All offers shall be without cost for GEKA, even if they have been submitted on GEKA'S request.

2.2 Unless otherwise agreed upon, offers shall be open for acceptance for 90 (ninety) days following receipt by GEKA.

**3. PURCHASE ORDERS, DATA DELIVERED BY GEKA**

3.1 PURCHASE ORDERS shall be valid only if they are placed in writing on GEKA'S official form and transmitted to the SUPPLIER by either facsimile, mail or e-mail. Any oral agreement, amendment or change of any PURCHASE ORDER shall be valid only if confirmed by GEKA in writing. Sketches, drawings, comments, specifications, etc. shall form an integral part of the CONTRACT provided that they are expressly mentioned in a PURCHASE ORDER.

3.2 The CONTRACT shall be deemed to have been entered into upon receipt of the PURCHASE ORDER, unless SUPPLIER takes exception to the PURCHASE ORDER in writing within five (5) working days after receipt of the PURCHASE ORDER. Upon SUPPLIER'S start of the execution of the PURCHASE ORDER, the PURCHASE ORDER shall in any case be deemed to have been accepted by the SUPPLIER.

3.3 SUPPLIER shall be obliged to refer to GEKA should SUPPLIER perceive an error or open point regarding essential parts of the CONTRACT, particularly in respect of quantity, price, or term. SUPPLIER is responsible for becoming acquainted with all essential data and circumstances as well as the respective intended purpose.

#### **4. SUBCONTRACTING**

SUPPLIER shall not subcontract any part of the work on any goods or services to be supplied under the CONTRACT without prior written approval of GEKA. SUPPLIER must provide to subcontractors all necessary information such that all purchasing requirements will be fulfilled, including key characteristics applicable to the subcontractor's scope of work. This provision shall not apply to purchases of standard commercial products, nationally advertised products, or raw materials.

#### **5. PRICES AND PAYMENT**

5.1 Unless otherwise specified in the PURCHASE ORDER, the prices agreed shall be fixed prices and shall remain unchanged until completion of the CONTRACT and shall include packaging and freight costs, taxes and duties, however without Value Added Taxes.

5.2 1. Value added taxes (VAT), sales taxes or other taxes, as well as packaging and freight costs shall be stated separately in the invoice.

2. SUPPLIER is obliged to provide a supplier's declaration in accordance with Regulation (EU) 2015/2447 with the first delivery at the latest or a declaration of non-preferential origin in accordance with Regulation (EU) 2015/2446, Art. 31 to 36a and to carry out an inspection in accordance with German, European and American export law (stating the German/European export list number [AL] or the American ECCN) on request.

3. As long as the formal requirements according to article 5.2 paragraphs 1 and 2 are not fulfilled, the invoices are not deemed to have been issued.

5.3 For a period of two (2) years following the completion of the CONTRACT, GEKA may, upon its request, audit all SUPPLIER records related to the SCOPE OF SUPPLY. However, Supplier may exclude trade secrets, formulas, or processes from audit unless GEKA arranges for review by a third party under obligation of confidentiality. For purposes of the audit, SUPPLIER shall make its

books and records available to GEKA during normal business hours and shall permit GEKA to have reasonable access to the SUPPLIER'S facilities to the extent necessary to conduct the audit. Additionally, SUPPLIER shall secure the compliance of its subcontractors to the extent necessary for GEKA to conduct an audit pursuant to this provision.

5.4 Unless otherwise agreed upon, the CONTRACT price shall be paid within ninety (90) days net after acceptance of the SCOPE OF SUPPLY and issuing of invoice, whichever date is later. GEKA is entitled to reduce the purchase price by 1% if payment is made within sixty (60) days and by 2% if payment is made within thirty (30) days.

5.5 If GEKA makes advance payments, SUPPLIER shall, at GEKA'S written request, provide an irrevocable and unconditional first demand bank guarantee in the amount of the advance payments, issued by a first-class bank acceptable to GEKA and shall be valid for CONTRACT period plus three (3) months.

5.6 On delay of requested certificates of material, quality documents, or other documents pertaining to the SCOPE OF SUPPLY, GEKA shall be entitled to extend any agreed payment period appropriately.

5.7 GEKA reserves the right to set off counter-claims of GEKA or affiliated GEKA companies against payments owed to SUPPLIER. SUPPLIER shall only be entitled to assign claims against GEKA to third parties with GEKA'S prior written approval, which GEKA shall not refuse unreasonably.

#### **6. FREE ISSUE MATERIALS / TOOLING**

6.1 The title to materials and/or tools (such as dies, jigs, fixtures, patterns, gauges, molds, test equipment) supplied by GEKA ("FREE ISSUE MATERIALS") for execution of an order shall remain with GEKA even following machining or processing. Such materials and/or tools shall be

marked as GEKA'S property and shall be stored separately until machined or processed. Upon request by GEKA, machining waste from FREE ISSUE MATERIALS shall be returned to GEKA. The SUPPLIER shall be required to notify GEKA immediately of any faulty or insufficient quantity of material; otherwise this objection is forfeited. FREE ISSUE MATERIALS made available by GEKA must be used exclusively for the execution of the PURCHASE ORDER placed by GEKA. They must neither be copied nor used for other purposes unless SUPPLIER has obtained GEKA'S prior written approval.

- 6.2 If tooling and tool design is provided by SUPPLIER on the PURCHASE ORDER, it will be priced separately and when finished must be invoiced separately, unless otherwise agreed. If the cost of tooling and tool design is to be amortized and included in the unit price of goods being supplied under present and future PURCHASE ORDERS, then the invoice must state the total cost of the tooling, the number of units the tooling cost is to be amortized over, and the portion charged to past PURCHASE ORDERS as well as the portion charged to the current PURCHASE ORDERS. Tooling and tool drawings paid for by GEKA become GEKA'S property and are to be used exclusively to perform GEKA'S PURCHASE ORDERS unless otherwise expressly authorized in writing by GEKA. GEKA reserves the right to accelerate payment on tooling being amortized for the purpose of ownership.
- 6.3 Tooling and tool designs belonging to GEKA, independent of whether provided by GEKA or delivered by SUPPLIER, as well as FREE ISSUE MATERIALS, shall be at GEKA'S disposal for any purpose, and the SUPPLIER agrees to deliver such tooling, tool designs and FREE ISSUE MATERIALS on request of GEKA at no expense, except however of shipping expenses. The tooling, tool designs and FREE ISSUE MATERIALS shall be insured by SUPPLIER against damage and loss, and the SUPPLIER

agrees to be responsible for normal maintenance, storage, damage or loss of tooling while on consignment in his facility, at no expense to GEKA. The SUPPLIER hereby assigns to GEKA all claims for compensation under this insurance; GEKA accepts the assignment. The SUPPLIER is obliged to carry out any necessary maintenance and inspection work on our tools and to carry out all maintenance and repair work at its own expense in good time. If he culpably omits this, claims for damages remain unaffected.

## **7. DATE OF DELIVERY AND CONSEQUENCES OF DELAYS**

- 7.1 TIME IS OF THE ESSENCE. SUPPLIER shall deliver on agreed time. Early deliveries will not be accepted unless expressly accepted in writing. GEKA shall be entitled to deduct arising cost thereof such as cost for storage etc. from the CONTRACT price. The date of delivery shall be deemed to have been met, if:
- a) for EX WORKS deliveries and/or FCA, readiness for dispatch of the SCOPE OF SUPPLY including all documents, has been announced to GEKA (department responsible for the CONTRACT) before expiry of the delivery date;
  - b) in all other cases, the SCOPE OF SUPPLY, including all documents, has arrived at the place of destination and/or the performance of the services has been accepted by GEKA before expiry of the delivery date.
- 7.2 SUPPLIER shall provide GEKA with immediate notification of foreseeable delays in delivery, stating the reasons for the delay and the expected duration of the delay, regardless of whether the whole or part of the SCOPE OF SUPPLY is concerned. SUPPLIER is obliged to undertake at own costs all reasonable measures in order to prevent or remedy delays in delivery.
- 7.3 Except for cases of delayed delivery involving a genuine occurrence of an event of Force Majeure, GEKA shall be entitled pursue all claims

provided by law, irrespective of whether the SUPPLIER has notified the delay, or a penalty has been agreed upon.

7.4 Subject to section 7.3 above, if a fixed date has been agreed upon for the execution of the SCOPE OF SUPPLY, and if this date will not be observed due to reasons attributable to SUPPLIER or its subcontractors, then:

- (i) GEKA reserves the right to terminate the CONTRACT and to ask for the reimbursement of all advance payments made after having given SUPPLIER a last opportunity to fulfill its obligations. If SUPPLIER does not promptly return advance payment funds, then at GEKA'S discretion, an interest charge may be charged against any outstanding balance of advance payments. In addition, GEKA may seek reimbursement for any related collections and attorneys' fees; or
- (ii) GEKA reserves the right to ask the SUPPLIER to provide to GEKA with all work that has been completed in exchange for payment of the value of the work that this completed work has for GEKA.

7.5 If the delivery date has not been met and provided GEKA does not exercise its rights described in section 7.4 above, SUPPLIER shall pay a penalty for the delay in addition to the damages caused by the delay. This penalty shall amount to one and a half percent (1.5 %) per full week of the purchase price for the entire SCOPE OF SUPPLY. The aggregate penalty for delay shall not exceed nine percent (9%) of the entire purchase price. Penalties paid shall be deducted from actual damages claimed by GEKA. GEKA is entitled to demand the contractual penalty in addition to performance; GEKA shall declare the reservation of the contractual penalty at the latest within ten (10) working days of acceptance of the delayed delivery. Further claims and rights remain reserved.

7.6 SUPPLIER shall not be entitled to use the non-arrival of essential documents, FREE ISSUE MATERIALS or other objects to be supplied by GEKA as a defense, unless the same had been demanded in good time from GEKA, or, if dates of delivery had been agreed, a reminder had been sent in due time to GEKA.

## **8. PACKAGING, SHIPMENT**

8.1 Unless otherwise agreed upon, the SCOPE OF SUPPLY shall be shipped DAP to the place of destination. SUPPLIER shall be liable for suitable and appropriate packaging, protecting the goods against damage and corrosion during shipment, and, where applicable, any subsequent short-term storage (i.e. up to a maximum of 60 days). Where special packaging is agreed, GEKA'S packing instructions are required to be strictly observed. SUPPLIER shall be liable for damages due to improper packaging and/or failure to conform to GEKA'S instructions.

8.2 GEKA reserves the right to return, for a refund, any part of the SCOPE OF SUPPLY which is damaged or corroded as a result of improper packing or SUPPLIER'S failure to observe specific packaging instructions. The cost of return shipment shall be absorbed by the SUPPLIER.

8.3 Where special care is required during unpacking, SUPPLIER shall notify GEKA about the specifics thereof in due course. In particular, a suitable and conspicuous warning shall be attached to the packaging.

## **9. COMPLIANCE WITH APPLICABLE LAWS**

9.1 SUPPLIER warrants that it will comply with all applicable laws, statutes, rules, regulations or orders in the performance of the SCOPE OF SUPPLY, and shall provide all documents required for the export from the place of production and import to the place of end-use, such as but not limited to certificates of origin, export licenses, material safety data sheets, etc.

**10. DELIVERY / EXPORT CONTROL**

- 10.1 Partial deliveries and/or deliveries made prior to the agreed date of delivery shall not be permitted without GEKA'S express prior written approval.
- 10.2 SUPPLIER undertakes to inspect the goods before shipment to ensure that they comply in terms of quality and quantity with the PURCHASE ORDER. Only material which has passed the inspection shall be delivered.
- 10.3 Each shipment has to include a detailed delivery note containing GEKA'S special instructions or references, confirmation that an inspection has been performed, and in particular GEKA'S PURCHASE ORDER number. For shipments to different delivery addresses, GEKA requires separate delivery notes.
- 10.4 Unless otherwise agreed, the invoice must be sent to GEKA in duplicate. One copy must be enclosed with the delivery of the SUPPLIER. The second invoice must be marked as "COPY" and sent by separate post to the invoice address of GEKA. All costs arising from the non-fulfilment of this provision shall be borne by the SUPPLIER
- 10.5 All correspondence (letters, delivery notes, invoices etc.) must show GEKA'S PURCHASE ORDER number, order date, the quantities specified in the order or in connection with a specific article or section, delivery notes also with indication of gross and net weight. The delivery note must indicate the delivery address according to the CONTRACT.
- 10.6 The SUPPLIER hereby represents and warrants that it is and will remain in compliance with the requirements of all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Such requirements include but are not limited to obtaining all required authorizations or licenses for the export or re-export of any controlled item, product, article, commodity, software or technology. Without

limiting the generality of the foregoing, the SUPPLIER hereby represents and warrants that it has not been, and is not currently, debarred, suspended or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, processing or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the United States or any other state. The SUPPLIER agrees to indemnify and hold harmless GEKA from any costs, penalties or other losses caused by, or related to, any violation or breach of the warranties contained in this provision.

**11. TRANSFER OF OWNERSHIP AND RISK**

- 11.1 Transfer of ownership shall take place at the time when the SCOPE OF SUPPLY or parts thereof have been finished. Between transfer of ownership and delivery, SUPPLIER will store the SCOPE OF SUPPLY without costs to GEKA and mark them as owned by GEKA. Furthermore, SUPPLIER undertakes to store and insure the SCOPE OF SUPPLY as if the ownership would not have been transferred.
- 11.2 Risk shall pass to GEKA at the time of arrival of the delivery at the agreed place of delivery.
- 11.3 Should the requested shipment documents not be supplied in accordance with the CONTRACT and/or GEKA'S instructions, the goods shall be stored at the SUPPLIER'S charge and risk until arrival of the same.

**12. TERMINATION FOR DEFAULT**

If the Supplier does not comply with provisions or requirements of the contract, GEKA is entitled, after the expiry of a reasonable period of grace, insofar as this is not dispensable under the statutory provisions, to terminate further services of the Supplier within the framework of the order by means of written notification to the Supplier, without prejudice to other rights or remedies to which GEKA is entitled under the contract. In the event of such a termination, GEKA has the right to complete the ORDER using the means selected by

GEKA; the supplier is liable for all additional costs incurred by GEKA in this connection and must hand over or transfer to GEKA any work commenced and grant GEKA the right to use all documentation of the supplier required to complete the scope of supply. Amounts owed to the supplier for deliveries of goods and services carried out by the supplier before termination in full compliance with the conditions of the contract are offset against the additional costs incurred by GEKA for the completion of the scope of supply and other damages incurred by GEKA as a result of the non-fulfilment by the supplier.

**13. INSPECTION, DRAWINGS, TEST CERTIFICATES, OPERATING INSTRUCTIONS, SPARE PARTS**

- 13.1 GEKA or its representatives shall be entitled, with reasonable notice, to carry out inspections and ongoing examinations of the production, respectively to reject faulty parts during manufacturing. Inspections or examinations shall not relieve SUPPLIER from its exclusive responsibility for the whole SCOPE OF SUPPLY. During the execution of the CONTRACT, SUPPLIER shall allow free access to the manufacturing plants as well as to those of its subcontractors during reasonable business hours.
- 13.2 GEKA'S approval of the final design drawings shall not relieve SUPPLIER of its responsibility for the SCOPE OF SUPPLY.
- 13.3 Final drawings, test certificates, maintenance and operating instructions and spare parts' lists required for the proper maintenance of the SCOPE OF SUPPLY shall be provided to GEKA in the quantities and languages requested together with the delivery at the latest.
- 13.4 The SUPPLIER undertakes to supply GEKA on request with spare parts belonging to the scope of supply for ten (10) years after acceptance in accordance with Article 14. Spare parts prices must be fair and reasonable.

**14. ACCEPTANCE, WARRANTY AND GUARANTEES**

- 14.1 Unless otherwise agreed upon in writing, acceptance shall take place after delivery at the place of destination or after placing into operation, whichever occurs later. Payment for work in whole or part will not constitute acceptance.
- 14.2 SUPPLIER expressly warrants that the entire SCOPE OF SUPPLY covered by the CONTRACT will conform to the specifications, drawings, samples, performance guarantees, or any kind of description furnished by or specified by GEKA and will be of merchantable and good material and workmanship and free from defects. SUPPLIER expressly warrants that the material covered by the CONTRACT will be fit and sufficient for the purpose specified. If certificates, test reports or similar documents form part of the agreed SCOPE OF SUPPLY, the data contained therein shall be deemed as warranted characteristics, even if such certificates etc. originate from the SUPPLIER'S subcontractors.
- 14.3 Unless otherwise agreed upon in writing, SUPPLIER expressly warrants that in executing the CONTRACT, SUPPLIER and the subcontractors have applied the principles of quality assurance according to the relevant ISO or equivalent standards. Quality records have to be safely archived for the period required by the applicable law for the respective goods, however not less than ten (10) years after acceptance as defined in Article 14.1 hereof.
- 14.4 Should SUPPLIER fail to meet the warranties or guarantees during the warranty and guarantee period, SUPPLIER shall at GEKA'S option promptly remedy the defects at GEKA'S facility, or at its customer's facility or site, or have the defects remedied at SUPPLIER'S costs by a third party. Should SUPPLIER fail to promptly remedy any defects or in case of emergency, GEKA shall be entitled to remedy the defects itself or cause them to be remedied by a third party, in each case at the SUPPLIER'S cost. If the replacement or repair of defective goods or services is not desired,

SUPPLIER shall grant GEKA an adequate reduction of the CONTRACT price to reflect the value of the goods or services in their non-remedied state.

- 14.5 Following receipt, GEKA or its customers shall have a reasonable period of time to inspect the SCOPE OF SUPPLY or parts thereof. GEKA shall notify the SUPPLIER of any defects detected during the inspection within fourteen (14) days of delivery
- 14.6 Unless otherwise agreed in the CONTRACT, the warranty and guarantee period shall extend thirty-six (36) months from acceptance by GEKA.
- 14.7 Where substitute delivery is made, the items originally delivered to GEKA shall be left with GEKA for use free of charge until impeccable substitute delivery is ready for operation to GEKA. The same shall apply in case of whole or partial termination of the CONTRACT due to faulty supply.
- 14.8 In the event of disputes on quality parameters, an expert opinion will be obtained. Unless otherwise agreed upon in writing, the opinion of the Swiss Federal Laboratories for Materials Testing & Research (EMPA) will be requested. The parties undertake to accept the findings of the agreed expert or the EMPA as the case may be. The costs of the expert opinion will be borne by the party at fault.

**15. WORK CARRIED OUT IN GEKA'S FACILITY OR AT WORK SITE**

If work is carried out in GEKA'S or its customer's facility, or on construction or erection sites, these PURCHASE TERMS shall be supplemented by GEKA'S or its customer's safety instructions and rules. The SUPPLIER shall supply such instructions and/or rules in writing. Furthermore, the SUPPLIER shall instruct its employees, consultants, etc. to comply with such instructions and rules.

**16. INTELLECTUAL PROPERTY AND SECRECY**

- 16.1 GEKA retains all intellectual property rights in all information provided to the SUPPLIER in connection with this CONTRACT, including but not limited to any documents, specifications, drawings, sketches, calculations, or models and intellectual property developed by the SUPPLIER based on information supplied by GEKA. SUPPLIER will use these documents for the exclusive purpose of executing the CONTRACT. Without GEKA'S prior written approval, SUPPLIER shall **NOT** be entitled to manufacture products based on these documents for third parties, or to copy such documents, or to make them known in whatever way to third parties, which are not directly involved in the execution of the CONTRACT or parts thereof. Upon demand, SUPPLIER shall return all information, including all copies or reproductions thereof, previously supplied by GEKA in connection with this CONTRACT. Notwithstanding the preceding, SUPPLIER however shall be entitled to retain one copy for legally or contractually required archiving purposes.
- 16.2 GEKA uses the supplied raw materials, semi-finished products, vendor parts and production machinery to manufacture products for the world market. GEKA typically supplies cosmetics manufacturers who in turn are active worldwide, especially in the USA. The SUPPLIER guarantees that the item(s) forming the scope of delivery are free from third-party property rights (such as patents, design and registered design rights, copyrights and trademark rights and claims relating to software) and from claims due to anti-competitive imitation and illegal use of third-party trade secrets. If a production facility is part of the scope of delivery and this production facility infringes a third party's industrial property right through the process it uses, or unlawfully exploits a third party's trade secret, the following applies: If the products in the hands of GEKA or its worldwide customers in Germany or another country, which have been manufactured with the aid of the production plant in accordance with the intended purpose, are subject to claims by the holder of the

rights, for which recourse can be taken against GEKA in the latter case, the SUPPLIER is also fully liable for this to the extent that it is responsible for the defect. The same applies analogously if a raw material, semi-finished product or supplier part belonging to the scope of supply infringes a third party's property right or is subject to claims for the unauthorized use of a trade secret: If this infringement of rights/defect continues during the intended processing or the intended integration into the end product in such a way that the end product, which is in the hands of GEKA or its worldwide customers, is exposed to claims of the holder of the rights in Germany or another country, for which recourse can be taken against GEKA in the latter case, the SUPPLIER is also fully liable for this if he is responsible for the defect.

- 16.3 If justified claims within the meaning of paragraph 16.2 above are asserted against GEKA, GEKA is entitled to request the SUPPLIER at its reasonable discretion to procure the right of use (license) or to change or exchange the scope of supply - without impairing the suitability - in such a way that the use of the scope of supply by GEKA or its customers no longer constitutes an infringement of rights.
- 16.4 If GEKA defends itself against claims raised in accordance with paragraph 16.2, GEKA can demand an advance payment from the Supplier, insofar as the SUPPLIER is responsible for the defect, in the amount of the presumably reasonable legal costs, including the reasonable costs for a counter-attack on the relevant property right (e.g. action for annulment, opposition, application for cancellation or opposition). Any later reimbursement of the legal costs or part thereof which may be payable by the opponent will be passed on to the SUPPLIER. In this respect, the SUPPLIER shall indemnify and hold GEKA harmless in full from all claims, damages and costs arising from Article 16.
- 16.5 SUPPLIER undertakes to provide GEKA all documents and information produced in connection with the SCOPE OF SUPPLY. GEKA shall have

an unrestricted right to use said documents for the purposes of operation, maintenance, repair, training and enlargement of the SCOPE OF SUPPLY.

- 16.6 GEKA and/or its customer shall not be mentioned in any publications for advertising purposes without GEKA'S prior written approval.

## **17. FORCE MAJEURE**

- 17.1 SUPPLIER shall not be liable for any non-performance, loss, damage, or delay due to war, riots, fire, flood, strikes or labor difficulty, governmental actions, acts of God, acts of GEKA or its customer, delays in transportation, or other causes beyond the reasonable control of SUPPLIER. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. If the grounds for Force Majeure continue for more than thirty (30) calendar days, either GEKA or SUPPLIER may terminate the CONTRACT upon seven (7) days written notice to the other party.

- 17.2 SUPPLIER shall be entitled to be compensated in case of termination for the work done prior to termination and the expenses for non-cancelable procurements. GEKA shall be entitled to receive all work results for which it has paid.

## **18. INDEMNITY**

- 18.1 SUPPLIER agrees to defend, indemnify and hold harmless GEKA and its customers, employees, agents and subcontractors, against any loss, cost, damage or liability, including attorney's fees, arising from the negligence or other breach of duty by SUPPLIER and those for whom the SUPPLIER is responsible in connection with the CONTRACT or the goods or services supplied hereunder.
- 18.2 In addition to the preceding, SUPPLIER shall indemnify GEKA and GEKA'S customers for any and all loss, damage, expense, (including but not limited to attorney's fees) claims or liability arising out of any infringement or claim of infringement of

any patent, trademark, copyright, trade secret or other proprietary interest based on the manufacture, installation, use, lease, or sale of any goods, materials or services furnished to GEKA under this CONTRACT. GEKA shall notify SUPPLIER promptly of any such claim or infringement.

## 19. INSURANCE

SUPPLIER shall effect and maintain General Liability and Products Liability insurance coverage sufficient to cover SUPPLIER'S obligations and liability arising in connection with this CONTRACT. SUPPLIER'S General Liability and Products Liability insurance shall be maintained with a minimum limit of **EUR 5,000,000 million** per occurrence and a combined aggregate coverage of **EUR 10,000,000 million**.

Upon request, SUPPLIER shall provide GEKA with insurance certificates verifying that SUPPLIER does maintain the insurance coverage specified above.

## 20. QUALITY AND DOCUMENTATION

20.1 The SUPPLIER shall comply with the recognised standard of technology, safety regulations and the agreed technical data for the delivery. Changes to the delivery item or an already approved production process require the prior written consent of GEKA.

20.2 The initial sampling shall be carried out in accordance with the quality assurance agreement agreed between the parties. The required documents shall be submitted in German or English. The use of any other language is not permitted. If GEKA requests initial sampling, the series delivery may only begin after written approval of the samples. Irrespective of this, the SUPPLIER shall constantly check the quality of the delivery item and design its quality assurance system in such a way that it corresponds to the latest state of the art, in particular DIN ISO 9001:2008.

20.3 If the type and scope of testing and the testing equipment and methods have not been firmly agreed between the SUPPLIER and GEKA, the

SUPPLIER must submit a corresponding proposal. At the request of the SUPPLIER, GEKA is prepared to discuss the test with the SUPPLIER within the scope of GEKA's knowledge, experience and possibilities, and to determine the required state of the art in testing technology. If the parties do not reach agreement on this, the test equipment and methods will be determined by GEKA at its reasonable discretion and binding for both parties.

20.4 Insofar as the SUPPLIER has received drawings, samples or other regulations from GEKA, he undertakes to comply with them with regard to the type, quality and design of the delivery item. The SUPPLIER may not refer to documents, advertising statements or drawings containing statements on the nature of the delivery item if the requirements stated therein do not correspond to the GEKA requirements in the above documents. In all other respects, however, the SUPPLIER is bound by such statements if they exceed the quality requirements of GEKA. In the technical documents, the SUPPLIER must also record in special records when, in what way and by whom these delivery items have been tested with regard to the characteristics requiring documentation and what results the required quality tests have produced. The test documents must be kept for 20 years and presented to GEKA if required. If the SUPPLIER ceases its business operations before expiry of the 20-year period, it must provide GEKA with the documents free of charge at this time. The SUPPLIER must place upstream suppliers under the same obligation to the same extent as far as legally possible.

20.5 Insofar as authorities or customers of GEKA demand insight into the production process or the production documents of GEKA for the purpose of checking certain requirements, the Supplier declares that he is prepared to grant the same rights in its company and to provide all reasonable support in this respect, insofar as his secrecy interests do not outweigh these. In addition, the SUPPLIER must ensure that these rights are

granted to the authorities, GEKA or customers of GEKA, also with regard to the SUPPLIER's sub-contractors.

20.6 For materials which, due to laws, regulations, other provisions or their composition or their effect on the environment, require special treatment with regard to packaging, transport, storage, handling and/or waste disposal, the SUPPLIER shall submit to GEKA with the offer a fully completed safety data sheet, the data sheet required for possible further distribution abroad and an applicable accident data sheet (transport). In the event of changes in the materials or the legal situation, the SUPPLIER will hand over updated data and information sheets to GEKA.

## 21. HAZARDOUS SUBSTANCES AND PREPARATIONS

21.1 For goods and materials as well as for processes which, due to laws, ordinances, other regulations or due to their composition and their effect on the environment, must receive special treatment with regard to transport, packaging, labelling, storage, treatment, manufacture and disposal, among other things, the legal regulations of the country of manufacture as well as of the country of distribution must be complied with by the SUPPLIER.

21.2 In this case, the Supplier will provide GEKA with the necessary papers and documents before the order is confirmed. In particular, all hazardous substances and water-hazardous substances may only be delivered after presentation of an EC safety data sheet and approval by GEKA. If the requirements according to Section 21.1 change in the course of the supply relationship, the SUPPLIER will immediately send GEKA the papers and documents corresponding to the changed requirements.

21.3 GEKA is entitled to return hazardous substances and water-hazardous substances provided for test purposes to the supplier free of charge.

21.4 The Supplier is liable to GEKA for all claims arising from the culpable non-observance of the legal regulations existing in this respect.

21.5 For information purposes only and excluding any responsibility for its correctness and completeness, GEKA provides a "Prohibited List / List of declaratory substances" on the homepage of the GEKA GmbH ([www.geka-world.com](http://www.geka-world.com)).

21.6 The SUPPLIER shall ensure that the requirements of the EU chemicals regulation REACH (Regulation (EC) No. 1907/2006, OJ EU of 30.12.2006) - hereinafter referred to as "REACH" - are complied with, in particular that pre-registration and registration are carried out in due time. GEKA is under no circumstances obliged to carry out the (pre-) registration.

The SUPPLIER is aware that the products cannot be used if the requirements of REACH are not completely and properly fulfilled.

21.7 In fulfilling its contractual obligations, the SUPPLIER must otherwise comply with all statutory and official regulations with regard to environmental protection.

21.8 The SUPPLIER shall indemnify GEKA in full against all consequences, in particular damages of GEKA GmbH and claims of third parties against GEKA GmbH, resulting from the fact that the SUPPLIER culpably did not, not completely or not in time comply or fulfilled the above provisions of Clauses 21.6 and 21.7.

## 22. MISCELLANEOUS

### 22.1 Applicable Laws and Jurisdiction

The CONTRACT is construed and shall be interpreted in accordance with the laws of Germany excluding and without application of any conflict of law rules. GEKA and SUPPLIER expressly agree that the UN Convention for International Sale of Goods (Vienna Convention) shall not apply to this CONTRACT.

Nothing contained in these PURCHASE TERMS shall limit the rights of GEKA available under the applicable law.

Place of jurisdiction shall be Bechhofen (Germany). GEKA reserves the right to claim against SUPPLIER at SUPPLIER'S place.

### **22.2 Assignment**

Any attempt to assign, transfer, or delegate any of the rights, duties or obligations herein to a third party without prior written consent of the other party shall render such attempted assignment. GEKA'S affiliated companies shall not be considered third parties for this purpose.

### **22.3 Waiver of Rights**

GEKA'S or SUPPLIER'S failure to exercise any of its rights shall not constitute or be deemed a waiver or a forfeiture of such rights.