

## GENERAL CONDITIONS OF PURCHASE

### for Purchased Parts and External Processing

between

the Supplier (hereinafter referred to as „Supplier“) on the one hand  
and

ZOERKLER GEARS GMBH & CO KG (hereinafter also referred to as “Zoerkler”), a company registered at Friedrich Zoerkler Strasse 1, 7093 Jois, Austria on the other hand, whereas Zoerkler and the Supplier together are referred to as the „Parties“ or individually as a „Party“ in relation to all Orders issued by Zoerkler, hereinafter also referred to as the „Purchase Order“

whereas

Zoerkler wishes to Purchase the goods, such as purchased parts and/or the services, such as external processing of goods provided by Zoerkler (hereinafter also referred to as „Delivery Item“) as outlined in the Purchase Order and the Supplier wishes to sell them based on the conditions of the present General Conditions of Purchase (hereinafter also referred to as the „Agreement“).

#### 1. APPLICABILITY

- 1.1. The terms of this Agreement and the accompanying Purchase Orders, if any, constitute the entire Agreement between the Parties and are intended to supersede all prior communications or other written materials between the Parties.
- 1.2. The conditions of this Agreement apply exclusively. The Supplier agrees that in the case of the use of General Terms and Conditions by the Supplier, Zoerkler's conditions are to be applied, even if the conditions of the Supplier remain unrejected. Conflicting or deviating General Terms and Conditions of the Supplier are only recognized by Zoerkler to the extent that Zoerkler has expressly agreed to them in writing. The acceptance of Delivery Items from the Supplier or their payment does not constitute consent.
- 1.3. Delivery Items will not be accepted or paid for if they are not delivered in accordance with this Agreement and the respective Purchase Order, if applicable. The Supplier shall include a reference to the Purchase Order number in all correspondence between the Parties. Within 14 (fourteen) calendar days after conclusion of this Agreement and the enclosed Purchase Order, issued by Zoerkler, the Supplier shall return the Order confirmation. In case of non-compliance with this provision, the Purchase Order shall be considered cancelled.
- 1.4. The quality assurance agreement of Zoerkler is part of the Agreement (this document is available at [www.zoerkler.at](http://www.zoerkler.at)).

#### 2. MODIFICATIONS/WRITTEN FORM

- 2.1. Zoerkler does not acknowledge a change to the Purchase Order, the Agreement and/or the Delivery Item, as long as Zoerkler has not duly authorized it in writing. Changes and amendments to this Agreement, the Purchase Order and/or the Delivery Item must be in writing and signed by both Parties to be valid. Oral collateral Agreements do not exist.

#### 3. DELIVERY/TRANSFER OF RISK

- 3.1. The shipment of the Delivery Item (hereinafter also referred to as “Delivery”) shall be made strictly in accordance with the instructions set out in the Purchase Order at the Supplier's risk. Unless otherwise specified in the Purchase Order, Delivery shall be made according to DAP (Incoterms 2020) to the following address:  
Zoerkler Gears GmbH & Co KG, Friedrich Zoerkler Strasse 1, 7093 Jois, Austria, during the following delivery times:  
- Monday to Thursday: between 08:00 and 16:00  
- Friday: between 08:00 and 13:00
- 3.2. If the Delivery Item is an external service provided by the Supplier (external processing) on goods made available by Zoerkler, the Delivery shall be made ex works (Incoterms 2020) at Zoerkler's risk.
- 3.3. The delivery date is the date as defined in the Purchase Order.
- 3.4. The transfer of risk for Deliveries shall be in accordance with the provisions of the Incoterms applicable according to the Purchase Order. If the Purchase Order does not contain this information, the transfer of risk shall take place in accordance with the provisions of DAP (Incoterms 2020) at Zoerkler in Jois, Austria and therefore the Supplier shall bear the risk of loss or damage to the Delivery Items until they are taken over by Zoerkler in Jois. Place of performance is the registered office of Zoerkler. The provisions of Article 3.2. shall apply accordingly to external processings.
- 3.5. Partial Deliveries are only permitted if Zoerkler has authorized this in writing in advance. Otherwise Zoerkler is not obliged to accept the Delivery.

#### 4. INSPECTION AND WARRANTY

- 4.1. Pre-Delivery inspection requirements, if applicable, shall be carried out in accordance with the provisions stated in the Purchase Order or Zoerkler's applicable inspection procedure.
- 4.2. Zoerkler will carry out an inspection of the Delivery Item for any visible defects within a reasonable period in the normal course of business after Delivery. If Zoerkler discovers defects in the Delivery Item, this shall be notified to the Supplier within a reasonable period of time. If such a defect appears later, it shall be notified to the Supplier within 3 (three) weeks from the date of knowledge of the defect. For the preservation of Zoerkler's rights the timely

dispatch of the notification by e-mail to the usual responsible contact person at the Supplier is sufficient, this also applies, if the notification is not received by the Supplier. The provisions of Articles 13 and 19 of this Agreement shall apply accordingly.

- 4.3. Zoerkler shall have the right at any time to refuse to accept Delivery Items that do not correspond to the Purchase Order or product specifications or do not fit the purpose of the Purchase Order. The risk and costs for rejected Delivery Items are borne by the Supplier. Any refused Delivery shall be considered as undelivered.
- 4.4. Unless otherwise specified in the Purchase Order, in the event of a defect in any part or parts of the Delivery within 36 (thirty six) months after completion of the Delivery, the Supplier's warranty shall apply and the Supplier shall remedy such defect, at Zoerkler's discretion either by repair or replacement. The warranty period for the Delivery Items in the form of replacement shall begin anew with the Delivery of replaced parts to Zoerkler. If repair or replacement is not possible or if the Supplier does not comply within a reasonable period of time, Zoerkler has the right at its discretion to a price reduction or cancellation of the Agreement and/or the Purchase Order. Insofar as Zoerkler insists on repair or replacement, Zoerkler is entitled to withhold the entire payment until complete fulfilment of the due Delivery.
- 4.5. All costs in terms of Article 13 of this Agreement incurred by Zoerkler due to the defective Delivery Items as well as all costs incurred by the Supplier in the course of warranty, insofar as a defect occurs, shall be borne entirely by the Supplier.

#### 5. PACKAGING

- 5.1. All Deliveries under this Agreement shall be securely and appropriately packed and the packaging shall be marked with Zoerkler's Purchase Order number. All packaging shall remain with Zoerkler unless otherwise agreed. If the Parties agree to return the packaging to Supplier, this shall be at Supplier's risk and expense.

#### 6. SPECIFICATIONS

- 6.1. All deliveries under this Agreement must comply with the quantity, quality standards and specifications specified in the Purchase Order, must meet the purpose required by Zoerkler and must be free of any actual or latent defects.

#### 7. CERTIFICATES OF CONFORMITY

- 7.1. If applicable, the Supplier shall provide Zoerkler with a copy of the certificate of conformity of the Delivery Items.

#### 8. PRICE/RETENTION OF TITLE

- 8.1. Prices shall correspond to the Purchase Order unless otherwise agreed and shall be exclusive of VAT, bank charges, customs duties and taxes. The prices on which the Agreement is based shall be deemed fixed prices. Price escalation clauses are not accepted by Zoerkler as long as they are not specially negotiated and agreed in writing.
- 8.2. The right of ownership of the Delivery Item, insofar as it concerns purchased parts, as long as the Purchase Order contains no other provisions, shall pass to Zoerkler upon full payment in accordance with the provisions of Article 9 of this Agreement. The right of ownership of goods made available by Zoerkler to the Supplier for external processing always remains with Zoerkler. The provisions of Article 11 of this Agreement shall apply accordingly.

#### 9. INVOICES AND PAYMENT CONDITIONS

- 9.1. Invoices containing the Purchase Order number, certificate of conformity, part numbers, descriptions, quantity specifications, customs tariff numbers and the weight of the Delivery Items shall be sent to Zoerkler by means of e-mail to [invoice@zoerkler.at](mailto:invoice@zoerkler.at), addressed to Zoerkler Gears GmbH & Co KG, Friedrich Zoerkler Strasse 1, 7093 Jois, Austria. If the invoices do not contain one or more of the above information, the invoice will be considered not valid. In this case Zoerkler has the right to effect payment only after the invoice has been validly issued and sent to Zoerkler in accordance with this provision. In this case, the regulations on default of payment shall not apply. The right to deduct any discounts remains in force.
- 9.2. Unless other conditions are defined in the Purchase Order, invoices for Delivery Items shall be paid either within 14 (fourteen) calendar days with a discount of 3% (three percent) for early payment or within 30 (thirty) days without discount. These amounts are calculated from the date on which the Deliveries and invoices are received by Zoerkler, provided that these have been successfully accepted by Zoerkler, following the process stated in Article 4.
- 9.3. In the case of justified claims Zoerkler is entitled to retain the entire outstanding payment.

#### 10. OFFSET

- 10.1. Zoerkler is entitled, if necessary, to offset all its claims it might have against the Supplier.

#### 11. EQUIPMENT / GOODS MANUFACTURED BY ZOERKLER

- 11.1. Any freely provided material, goods or any material, drawings, documents, samples, templates, tools or devices provided by Zoerkler or manufactured for Zoerkler in connection with the Purchase Order (hereinafter also referred to as “freely provided material”) shall be adequately insured by the Supplier, be

clearly marked as the property of Zoerkler, be stored under appropriate conditions on the premises of the Supplier and at the risk of the Supplier (except for wear and tear), not copied or communicated to other parties and also, without the express written consent of Zoerkler, not used for other work than specified in the Purchase Order.

- 11.2. Zoerkler shall at all times have ownership of it and of any rest of the freely provided material and the sole discretion in the disposal of this material. Furthermore, Zoerkler shall at all times have the right to demand the return of the freely provided material at its own risk and expense.
- 11.3. For the entire term of this Agreement and for further 3 years after its termination, the Supplier undertakes to maintain a business liability insurance with a coverage which is customary in the market and satisfactory for Zoerkler's requirements for any of the Supplier's obligation to pay damages or compensation, especially for damages on the by Zoerkler freely provided material, which are incurred due to Supplier's fault actions and which lead to the necessity for recovery or complete remanufacture of Zoerkler's material. Upon Zoerkler's request, the Supplier shall provide insurance certificates, which confirm this insurance coverage.

## 12. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 12.1. The provisions of the Confidentiality Agreement concluded between the Supplier and Zoerkler are fully applicable to this Agreement.
- 12.2. Any property rights concerning the information provided remain with the information provider at all times. If drawings/designs are created by the Supplier in the course of work on the Purchase Order (hereinafter also referred to as "Technical Information"), then all rights to this Technical Information shall be the property of Zoerkler and this Technical Information shall not be used by the Supplier, except for the execution of the Purchase Order and not copied or passed on to third parties without Zoerkler's express written consent. All drawings and other documents which represent or store such Technical Information shall be the property of Zoerkler and shall be formally returned to Zoerkler as soon as this is requested by Zoerkler after completion of the Purchase Order.
- 12.3. Zoerkler shall have the right to use any software and/or documentation in connection with the Delivery Item to the extent permitted by applicable law. Furthermore, Zoerkler shall be entitled to make a backup copy of it without having to obtain the express permission of the Supplier.
- 12.4. The Supplier, its employees and agents shall ensure that the terms and conditions of this Agreement and the Purchase Orders and any other confidential information relating to the performance of the Agreement and the Purchase Orders are kept confidential at all times.
- 12.5. The Supplier may not use the name or trademarks of Zoerkler for advertising of any kind, unless the Supplier has received the prior written consent of Zoerkler in this respect.

## 13. NON-PERFORMANCE/DELAY IN DELIVERY AND PERFORMANCE/INDEMNITY

- 13.1. In consideration of the Purchase Order the Supplier hereby agrees to indemnify and hold Zoerkler harmless against all claims, losses, damages, liabilities and costs resulting from:
- any damage, loss, death or injury caused by the Delivery Item or any act, negligence or omission of the Supplier or its subcontractors;
  - any alleged or actual infringement of third party rights, patents, registered design, trademarks or copyrights already existing or pending on the date of the Purchase Order in connection with the Delivery Items, if the Supplier has influence on the design of the Delivery Item.
- 13.2. If the Supplier knows or suspects that he cannot make the Delivery on the date agreed in the Purchase Order, he shall immediately inform Zoerkler of this in written form. In the event that the delay in Delivery is due to withholding or delayed Delivery of freely provided material by Zoerkler or delayed payment by Zoerkler for the respective affected Purchase Order, the Supplier may extend the delivery date by this period. For cases of Force Majeure, please refer to Article 18 of this Agreement. For delay in Delivery, which cannot be attributed to these stated reasons, Zoerkler grants a period for remedy in form of subsequent performance of 7 working days and after expiry of this period for remedy a contractual penalty of 2 % of the value of the outstanding Delivery Items for each commenced week of delay is agreed, which will be invoiced to the Supplier at Zoerkler's discretion. Zoerkler has the right to claim all damages resulting from the delay in Delivery. For the right to terminate the Agreement in case of delay in Delivery reference is made to Article 19 of this Agreement.
- 13.3. In particular in the event that claims are made against Zoerkler on the basis of product liability, the Supplier is obliged to release Zoerkler from such claims if and insofar as the damage was caused by a defect in the Delivery Item delivered by the Supplier. In cases of fault-based liability, however, this only applies if the Supplier acted guilty or negligent. If the cause of the damage lies within the Supplier's area of responsibility, he must prove that he is not at fault. Supplier shall bear all costs and expenses, including the costs of any legal action.
- 13.4. The Supplier refrains from enticing away or hiring employees of Zoerkler for himself during the validity of this Agreement as well as for 1 further year after termination of the Agreement. In the event of a breach of this non-solicitation clause, the Supplier undertakes to pay Zoerkler a one-time fee of 100% of the

amount paid by the Supplier to this person per year as a contractual penalty. The Supplier shall bear the burden of proof.

## 14. WORK IN ZOERKLER'S PREMISES

- 14.1. All work within the framework of the execution of the Purchase Order, which is carried out by the Supplier or on behalf of the Supplier in Zoerkler's premises, shall comply with the working conditions which apply in Zoerkler's facility. Liability for accidents of the Supplier is excluded unless these accidents are due to Zoerkler's intent or gross negligence.

## 15. TRANSFER OF RIGHTS AND OBLIGATIONS AND SUBCONTRACTING

- 15.1. None of the work within the scope of the execution of the Purchase Order shall be transferred or subcontracted by the Supplier without the prior written consent of Zoerkler.

## 16. EXPORT CONTROL AND CUSTOMS

- 16.1. The Supplier undertakes to acknowledge and comply with the European export control regulations and, insofar as the Delivery Items are subject to US law, also the US-(re)-export regulations.
- 16.2. Every request to obtain state confirmations for transit, import, export or re-export of the Delivery Items must be declared in writing by the Supplier to Zoerkler. For this purpose, the following information and necessary additional information, which may be required by Zoerkler, shall be provided by the Supplier during the offer phase:
- the export control list number according to the European and/or Austrian Foreign Trade Regulation or other applicable export control lists,
  - for Delivery Items imported from the USA, the ECCN (Export Control Classification Number) according to the US Export Administration Regulations (EAR) or according to International Traffic in Arms Regulations (ITAR) of another classification number in case the Delivery Items are considered military according to the law applicable in the USA,
  - the (economic) place of origin of the Delivery Items and their components, including technology and software,
  - whether the Delivery Items were transported through the USA, produced or stored in the USA or manufactured using US technology,
  - the part numbers of the Delivery Items, and
  - a contact person in the Supplier's organization for additional questions or clarification requests.
- 16.3. In addition, the Supplier shall inform Zoerkler in writing about changes in the above-mentioned information before sending the Delivery Items.

## 17. COMPLIANCE

- 17.1. The Supplier undertakes to comply with all applicable work regulations, environmental protection and occupational safety regulations and to develop a management system in accordance with ISO 14001. The Supplier shall also comply with the principles of the United Nations Global Compact Initiative, which regulates the observance of international human rights and greater environmental awareness and anti-corruption (for more information about the UN Global Compact Initiative – 10 Principles refer to: [www.unglobalcompact.org](http://www.unglobalcompact.org)).

## 18. FORCE MAJEURE

- 18.1. In cases in which a Party is prevented from fulfilling some or all of its contractual obligations due to unforeseeable, unavoidable events beyond the control of the Party for which it is not responsible and which are beyond the control of the Party ("Force Majeure"), that Party shall notify the other Party in writing within 7 days. The affected Party is exempted from fulfilling its contractual deadlines for the duration of the Force Majeure event. Force Majeure shall mean, among other things, fire, flood, war (whether declared or not), hostilities, civil commotion, accidents, pandemics, labor disputes, strikes, unavailability of transportation, any right, order, regulation, action, decision or requirement issued by any governmental authority or other entity authorized to do so, trade or export license restrictions or revocation of necessary licenses or permits or acts of governmental or other authorities. In the event of failure to comply with this notification obligation, the Party concerned shall no longer be entitled to invoke the relevant event as a case of Force Majeure and this party shall not be released from the performance of its contractual obligations.
- 18.2. During such cases of Force Majeure, as well as within 2 (two) weeks after their end, Zoerkler reserves the right to cancel the part of the Purchase Order that has not yet been delivered by the Supplier by means of written information to the Supplier in accordance with Article 19 of this Agreement. For the part of the Agreement already fulfilled, Zoerkler shall provide corresponding payment.

## 19. TERMINATION

### 19.1. TERMINATION AT DISCRETION

- 19.1.1. Zoerkler has the right to cancel the Purchase Order in whole or in part at its own discretion at any time before the Delivery of the Delivery Items or the target date of Delivery, by sending a written information to the Supplier. Upon receipt of this information about the termination, all work under the terminated Purchase Order shall be stopped and Zoerkler shall pay the Supplier a fair and reasonable sum for the direct loss of the Supplier caused by the termination

and the Supplier agrees to accept this sum as full and final satisfaction of all claims arising from the termination.

- 19.1.2. In the event of termination of the Purchase Order, the Supplier shall make every effort to mitigate such loss caused by such termination. Under no circumstances shall the sum that Zoerkler shall pay for the terminated Purchase Order exceed the price that would have been payable if the work had been completed. Zoerkler reserves the right to receive any partially completed work, including all relevant jigs, tools, clamping devices or documentation. In particular, by Zoerkler freely provided material shall be returned immediately to Zoerkler.

#### **19.2. TERMINATION DUE TO BREACH OF CONTRACT**

- 19.2.1. Zoerkler shall inform the Supplier of any breach or non-compliance with this Agreement or the Purchase Order by the Supplier. If the Supplier cannot remedy this breach of Agreement within 7 (seven) working days after the written notification, Zoerkler has the right to cancel the Purchase Order in whole or in part, without prejudice to Zoerkler's right to demand compensation for further damages suffered by Zoerkler as a result.
- 19.2.2. In particular, if a delay in Delivery occurs within the meaning of Article 13.2 of this Agreement, Zoerkler has the right to terminate the Agreement and/or the Purchase Order at any time after expiry of the period for subsequent performance by the Supplier. This right shall be without prejudice to the right under Article 13.2 of this Agreement to charge interest in the event of delay in Delivery. Upon assertion of the right to terminate this Agreement, the right to charge further interest for default to the Supplier expires. Notwithstanding this, Zoerkler has the right to claim all damages resulting from the delay in Delivery.
- 19.2.3. If the Delivery is not made according to the Purchase Order, for whatever reason, Zoerkler has the right, without prejudice to any rights or remedies, to cancel the relevant Purchase Order in part or in full, without being liable to the Supplier.
- 19.2.4. In the event of a serious violation of Austrian and/or international law in the cases of Articles 16 and/or 17 of this Agreement, Zoerkler has the right to cancel this Agreement and/or the respective Purchase Order in accordance with the provisions of Article 19 of this Agreement.

#### **19.3. INSOLVENCY**

- 19.3.1. In addition to the legal rights of withdrawal, Zoerkler is entitled to withdraw from or terminate the Purchase Order and/or this Agreement with immediate effect if the Supplier has stopped supplying its customers, a significant deterioration of the financial circumstances of the Supplier occurs or threatens to occur and the fulfilment of a Delivery obligation to Zoerkler is endangered, the Supplier becomes insolvent or over-indebted or the Supplier stops its payments.
- 19.3.2. Zoerkler is also entitled to rescind or terminate the Agreement and/or the Purchase Order if the Supplier applies for the opening of insolvency proceedings or comparable proceedings for the settlement of debts over its assets or if insolvency proceedings are opened.
- 19.3.3. If the Supplier has effected a partial performance, Zoerkler is only entitled to withdraw from the entire Agreement and/or Purchase Order if Zoerkler has no interest in the partial performance.
- 19.3.4. Insofar as Zoerkler intends to withdraw from or terminate the Purchase Order/Agreement on the basis of the above contractual withdrawal or termination rights in accordance with Article 19.3 of this Agreement, the Supplier shall compensate Zoerkler for the damages incurred thereby, unless the Supplier is not responsible for the occurrence of the withdrawal or termination rights.
- 19.3.5. Legal rights and claims are not limited by the provisions of this Article 19.

#### **20. SEVERABILITY CLAUSE**

- 20.1. If any provision of this Agreement or Purchase Order is found to be invalid, it will not affect the validity or enforceability of the remainder of the Agreement or Purchase Order. Any failure to enforce any provision of the Agreement or Purchase Order shall not constitute a waiver of that or any other provision. The invalid rule is replaced by a valid one.

#### **21. NOTICES**

- 21.1. Any notice or other communication shall be made in writing and addressed to Zoerkler's contact named in the Purchase Order.

#### **22. APPLICABLE LAW AND JURISDICTION**

- 22.1. This Agreement, each Purchase Order and all the contractual relationships shall be governed exclusively by Austrian law, excluding the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods.
- 22.2. Any disputes arising out of or in connection with the performance of this Agreement and/or the Purchase Order shall be settled amicably by the Parties. If an amicable Agreement cannot be reached, the place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships, which are based on this Agreement and/or the Purchase Order, is the court responsible for the registered office of Zoerkler. Zoerkler is further entitled at its discretion to sue the Supplier at the court of the registered office or branch of the Supplier.