

# PowerWind

## General Procurement Terms

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PowerWind limited  
Plot no.352-353  
HSIIDC Industrial Area Bawal  
Rewari,Haryana-123501

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

## § 1 General, Scope

1. The general procurement terms of PowerWind apply exclusively. They are an integral part of the contract and of any addenda. Contradictory or supplementary conditions, or conditions of the supplier deviating from these terms only become an integral part of the contract with the express acknowledgement of PowerWind in writing. This also applies for terms and conditions named in the purchase order or any other confirmations of the supplier. The acceptance of deliveries/services does not represent the acceptance of the terms and conditions of the supplier. The general procurement terms of PowerWind also apply when the contract with the supplier is implemented unconditionally with knowledge of contradictory or supplementary conditions, or conditions deviating from the general procurement terms of PowerWind.

2. All agreements made by and between PowerWind and the supplier with the aim of executing this contract shall be made in writing.

3. Incoterms 2010 shall apply to the interpretation of trade terms.

4. PowerWind procurement terms apply solely to businesspersons pursuant to sect. 310 para. 1 German Civil Code (Bürgerliches Gesetzbuch, BGB).

## § 2 Integrity clause

1. The contractual partners are obligated to take all measures necessary to avoid corruption and other criminal offenses. They are particularly obligated to take all precautionary measures within their company necessary to avoid serious transgressions. Irrespective of the form or perpetration, instigation or participation, serious transgressions are defined as:

a) serious criminal offenses committed in the course of business. These include criminal offenses such as fraud (sect. 263 Criminal Code (StGB)), embezzlement (sect. 266 Criminal Code (StGB)), falsification of documents (sect. 267 Criminal Code (StGB)), falsification of technical records (sect. 268 Criminal Code (StGB)), falsification of evidential data (sect. 269 and sect. 270 Criminal Code (StGB)), constructive false certification (sect. 271 Criminal Code (StGB)), suppression of documents (sect. 274 Criminal Code (StGB)) and anticompetitive agreements in the context of tenders (sect. 298 Criminal Code (StGB)),

b) the offering, promise or assurance of advantages to officials, holders of public office or persons especially bound to public service who are involved in the awarding or execution of orders (bribery or granting of undue advantages) (sect. 333 – 335 Criminal Code (StGB)),

c) the offering, promise or assurance of advantages to board members, managing directors or other employees of PowerWind who are not holders of office or persons especially bound to public service (see also sect. 299, 300 Criminal Code (StGB), insofar as the bribery of employees is involved),

d) the offering, promise or assurance of advantages to freelancers working on behalf of PowerWind on the awarding or processing of orders, e.g. planners, consultants and project controllers,

e) the unauthorised provision, securing, utilisation or communication of business and operational secrets as defined by sect. 17, Par. 2 Unfair Competition Act (UWG) for the purpose of competition, self-interest, to the benefit of a third party or with the intention of damaging the owner of the business operation, the unauthorised utilisation or communication of templates or regulations of a technical nature entrusted in the course of business as defined by sect. 18 Unfair Competition Act (UWG) for the purpose of competition and the unauthorised utilisation or passing on of templates or regulations of a technical nature and commercial information entrusted in the course of business, including on disks and other data media, as well as

f) violations of Part I of the Act Against Restraints of Competition (GWB), including involvement in agreements on prices or price components.

2. A serious transgression as previously defined also exists when the applicant or when the supplier offers, promises or assures unauthorised advantages to persons having close relations with employees or managing directors of PowerWind.

3. The supplier is to pay PowerWind a contractual penalty when a serious transgression as previously defined is committed by an employee or managing director of the supplier or by a subcontractor commissioned by the supplier in connection with the delivery/service to the disadvantage of PowerWind. This amounts to:

a) 7 % of the certified gross invoice total when the transgression was committed by a managing director/board member of the supplier,

b) 5 % of the certified gross invoice total when the transgression was committed by an authorised representative or proxy,

c) 2 % of the certified gross invoice total when the transgression was committed by an employee or subcontractor of the supplier, but no less than € 5,000. The assertion of a claim to compensation for damages by PowerWind arising from a committed transgression remains unaffected by the contractual penalty, whereby

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

in this case a forfeited contractual penalty will be credited against this compensation for damages.

4. PowerWind is entitled to terminate the contract without notice when a serious transgression as previously defined is committed by an employee or managing director/board member of the supplier.

### § 3 Offer, Offer documentation

1. Orders are binding only if they have been made in writing. PowerWind shall only be bound by orders of PowerWind if the supplier accepts such order(s) within one week by sending a written confirmation.

2. PowerWind does not pay for offers. Any and all written correspondence in connection with responses to queries and/or the submission of offers shall be directed to the department of PowerWind which initiated the respective query. The relevant PowerWind file number as well as the date of the PowerWind query shall be included in all such correspondence. The supplier's offer(s) shall restate the goods, PowerWind's purchase order number and terms and conditions that follow from PowerWind's query.

3. PowerWind reserves both ownership rights and copyrights to figures, drawings, calculations and other documentation. Such documentation may not be made available to third parties absent express written consent of PowerWind. They shall be used exclusively for manufacturing purposes pursuant to orders of PowerWind. The supplier shall return all such documentation to PowerWind upon completion of the relevant order without a request from PowerWind being necessary. Such documentation shall be kept confidential in regard to third parties; § 11.4 shall apply accordingly.

### § 4 Prices, Payment terms

1. The price shown in the order is binding. Absent any written agreement to the contrary, the price shall include any and all costs of delivery to the place of delivery specified in the order, including packaging. The supplier shall take back and dispose of the packaging at its expense if and to the extent that PowerWind asks the supplier to do so before paying for the delivery.

2. All prices shall not include value-added tax.

3. PowerWind can process invoices only if they contain the purchase order number specified in order of PowerWind. Invoices shall also contain a precise breakdown of the invoiced delivery according to number of units, dimensions and weight; the supplier shall be liable for all consequences resulting from noncompliance with this obligation, unless the supplier proves that the consequences cannot be attributed to it.

4. Invoices must include the eight-digit goods number.

5. Invoices can only be processed if they include the ordering company department and the date of the order.

6. Invoices must be sent separately from the delivery directly to the invoice verification department of PowerWind at the address provided.

7. The supplier shall submit invoices to PowerWind, in duplicate, immediately upon delivery. PowerWind must be able to verify the invoices, and copies shall be marked as such. Furthermore, the supplier shall submit invoices for monthly deliveries no later than by the third day of the subsequent month. In case weights and performance parameters deviate from specifications, PowerWind shall only recognize weights and performance parameters that PowerWind itself has measured. Offsets shall be made on the basis of the quantities, dimensions, performance parameters, and number of units PowerWind has determined. The supplier shall be free to prove the quantities, dimensions, performance parameters, and number of units as determined by such supplier.

8. Unless stipulated otherwise in writing, PowerWind shall pay the purchase price within 14 days calculated from the date of delivery and receipt of the invoice, subject to a cash discount of three percent (3 %) or within 90 days net from the date PowerWind received the invoice. The 14-day period governing the cash discount shall not begin to run prior to the date on which PowerWind receives an invoice from the supplier that contains the information set forth in para 3. Of this § 4; this shall not apply if the supplier proves that he is not responsible for missing or faulty information.

9. PowerWind's obligation to pay the purchase price depends on whether delivery of the goods to PowerWind was complete and free of defects.

10. In the event goods are accepted ahead of schedule, the payment period shall only begin with the scheduled delivery day and the receipt of an invoice as described above.

11. In the event of late payment, PowerWind is obligated to pay default interest in the amount of five percentage points above the base lending rate according to the Indian Civil Code.

12. PowerWind does not have any obligation to accept goods sent COD (cash-on-delivery). The supplier shall bear all costs incurred in connection with CODs. 13. Offsetting and retention rights shall be available to PowerWind as defined by law.

### § 5 Delivery Deadline

1. The delivery date given in the order is binding.

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

2. The supplier shall jointly agree with PowerWind on the mode of dispatch and the delivery address. The supplier shall notify PowerWind of pending deliveries in writing by postal mail or fax prior to each delivery. This notification shall contain precise information on the goods, especially the number of units to be delivered, as well as PowerWind's purchase order number. Following the handing over of the goods to a forwarder/courier service, PowerWind is also to be informed of the shipping data (AWB no., etc.). The supplier shall be deemed to have satisfied its notification obligation if PowerWind receives such notice prior to the goods' arrival.

3. The supplier shall notify PowerWind as soon as possible, in writing, if circumstances arise that indicate that the binding delivery date cannot be met or if the supplier becomes aware of such circumstances.

4. PowerWind shall be entitled to statutory claims in case of delays. In particular and without limitation, PowerWind shall be entitled to make claims for damages in lieu of performance once a reasonable deadline has expired to no avail. Furthermore, PowerWind is entitled to rescind from the contract after the expiration of such deadline to no avail. If PowerWind makes claims for damages, the supplier shall have the right to prove to PowerWind that the breach of duty cannot be attributed to it.

**§ 6 Transfer of risk, Documents**

1. In any case, the risk of accidental loss and of accidental deterioration shall be transferred to PowerWind only after PowerWind has accepted the goods at the delivery destination set forth in the order.

2. The supplier shall specify PowerWind's purchase order number precisely as specified on all shipping documents and bills of lading. PowerWind shall not be responsible for any delays in processing deliveries if the supplier fails to do so, unless the supplier proves that he is not responsible for the absence or faultiness of such specifications.

3. The bill of lading and a packing slip shall accompany each delivery in duplicate. The supplier number, purchase order number, material designation and material number, lot number, gross and net weight in kilograms, amount and type of packaging (disposable/reusable), the point of unloading, the recipient of the goods, and the place of deployment shall be specified in detail in all shipping documents and on the external packaging. Labels specifying the material designation, material number, serial number, and net weight shall be placed on single packages. The supplier shall use pallets that conform to IPPC standards, provided PowerWind asked the supplier to do so at the time the order was placed.

4. The supplier shall send the requisite declarations of origin related to the goods for customs purposes no later than two weeks prior to delivery. A supplier that is domiciled abroad or imports goods shall assume the responsibility for the accuracy of the customs declaration, which must comply with customs regulations and the Indian Foreign Trade Act . The supplier shall promptly notify PowerWind of a change in origin. Upon request, the supplier shall substantiate its claims regarding the origin of the goods with an official customs document

5. The supplier shall be liable for any disadvantages and costs which incur to PowerWind due to faulty or late declarations of origin, unless he proves he is not responsible for these.

6. Upon request, the supplier shall provide PowerWind with declarations of origin which are required for the trade with the delivered goods as soon as possible.

**§ 7 Quality and Compliance, Change in quality, Quality control, Inspections**

1. The supplier will carry out and maintain a management control system according to DIN ISO 9001, 14001, 31000 und OHSAS 18001, in the most recent version and provide documentation to PowerWind upon request. Deviating management control systems require the written consent of PowerWind.

2. The supplier, supplier's employees and subcontractors shall comply with PowerWind's "Integrated Company Policy" in the most recent version published on PowerWind's website ([www.powerwind.co.in](http://www.powerwind.co.in))

3. The supplier shall maintain records of all relevant details. The supplier shall also maintain appropriate records regarding all tests conducted as part of this quality control contract. Such records shall be maintained for

ten years. The supplier agrees to permit PowerWind to inspect such records.

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

4. The supplier will notify PowerWind in a timely fashion prior to changes to production processes, materials or supplier parts for the goods, relocation of production locations, as well as changes to processes or apparatus for the testing of the products or to other quality control measures, in order that PowerWind can determine whether the changes might be disadvantageous.

5. If the supplier violates its obligation pursuant to the previous Paragraph 4, it is obligated to compensate PowerWind for any resulting damages. PowerWind is also authorised to withdraw from the contract.

6 The supplier is obligated to also reach agreements with its suppliers with respect to an appropriate quality control system.

7. PowerWind shall have the right, during customary hours of business and operation, to perform quality audits at the supplier's place of business subject to advance notice. Such inspections shall serve to prove the purpose, efficiency, and precision of the quality control system used. The performance of such audits shall not in any way diminish the supplier's sole responsibility for the quality of the goods produced and delivered.

8. If quality problems have occurred in the past, PowerWind shall also have the right to carry out occasional inspections unannounced.

9. Such inspections shall be performed by employees of PowerWind's quality control department, who are obligated to maintain confidentiality vis-à-vis third parties. Each contracting party shall bear the costs incurred by it for such inspections.

10. If the supplier's manufacturing or quality control procedures are secret, the inspection(s) shall be limited to the inspection of a sufficiently large number of already manufactured units, provided and to the extent that PowerWind's rights to perform such inspections are protected thereby. If sufficient checks are possible only if PowerWind obtains secret information, compliance with the relevant quality standard shall be reviewed by an expert from an accredited auditing company who shall be appointed by its management. The findings of such an inspection shall be sent to both parties.

11. If particular inspections have been agreed on, the supplier shall notify PowerWind at least one week in advance that it is ready to have the respective inspections performed and shall coordinate an inspection date with PowerWind. The supplier shall indemnify PowerWind for all expenses incurred by PowerWind in this respect if the contractual item is not ready for inspection on the stipulated date for reasons attributable to the supplier or if defects of the contractual item require repeated or additional inspections.

12. The supplier shall bear all costs associated with providing materials certificates and/or test certificates, if he is required to provide such certificates. The material certificates and/or inspection certificates shall be available at the time of delivery.

13. Neither inspections nor the submittal of certificates shall affect PowerWind's contractual or statutory acceptance and warranty rights.

**§ 8 Inspection for defect, Liability for defects**

1. PowerWind shall test without undue delay following receipt of the product whether it corresponds to the ordered quantity and type or whether externally recognisable transport damage or defects are present. PowerWind shall notify the supplier of any damage or defects determined in the course of the aforementioned inspections. PowerWind will provide notification of any damage or defect determined at a later date latest within 14 days after revealing. One defective component (irrespective of the lot size) entitles PowerWind to return the entire delivery. The supplier is obligated to carry out a detailed outgoing inspection of the delivery object in order to ensure that PowerWind receives only delivery objects in accordance with the contract. Payment of the stipulated or invoiced price shall not be construed as an acknowledgement that the delivery was consistent with the contract or free of defects.

2. All statutory warranty claims (gesetzliche Mängelansprüche) shall be available to PowerWind in full; in any case, PowerWind shall be entitled to demand, at PowerWind's discretion, that the supplier remedy the defect or deliver a new item. PowerWind expressly reserves the right to make claims for damages, especially the right to claim damages in lieu of performance and is entitled to claim any costs due to any notice of defects as per PowerWind's "Overview of additional costs for notices of defects" then in effect, published on PowerWind's website ([www.powerwind.co.in](http://www.powerwind.co.in)).

3. PowerWind shall have the right to remedy the defect itself at the supplier's expense if there is a danger in delay or if the matter is particularly urgent. This requires that, due to the special urgency, PowerWind is unable to inform the supplier about the defect and the imminent damage and to set him an adequate time limit for correcting the defect himself.

4. Modifications to products that are made in connection with PowerWind's orders shall, in each case, affect solely the respective individual order. Unless stipulated otherwise in writing, such modifications shall not result in any changes to the properties of the product underlying subsequent agreements.

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

5. The statute of limitations for warranty claims shall be 36 months and it shall begin to run from the date on which risk is transferred.

**§ 9 Product Liability, Hold Harmless Clause, Insurance**

1. To the extent that the supplier is responsible for a product damage, such supplier shall hold us harmless from third-party claims for damages upon first demand, if and to the extent such claims are rooted in the area subject to the supplier's control and organization and provided the supplier itself is liable toward third parties.

2. In connection with its liability for claims within the meaning of para 1 the supplier shall also reimburse any costs resulting from or arising in connection with a product recall executed by PowerWind. PowerWind shall notify the supplier of the substance and scope of the planned recall measures – to the extent possible and reasonable – and shall give the supplier an opportunity to make a statement in connection with this. Any other statutory rights shall remain unaffected.

3. The supplier is obligated to maintain product liability insurance with a total coverage of at least €2 million per case of personal injury/property damage and €10 million total coverage (lump sum). Any claims to compensation for damages to which PowerWind is entitled remain unaffected by this.

4. The supplier is obligated to maintain adequate insurance coverage against fire, storm and tempest and business interruptions, and to demonstrate the status of this insurance protection to PowerWind upon request.

**§ 10 Industrial property rights**

1. PowerWind is authorized to unlimitedly use the product worldwide, including the patent and other intellectual property rights upon which it is based. The supplier warrants that no rights of third parties are breached in connection with its delivery. If a third party makes claims against PowerWind in this respect, the supplier is obligated to fully indemnify and hold harmless PowerWind from these claims on first demand (“auf erstes Anfordern”). PowerWind is not authorized to come to any agreement with the third party or reach a settlement without the consent of the supplier. The supplier's obligation to fully indemnify and hold harmless shall cover all damages, costs and any other expenses resulting from or in connection with the claims of a third party. The statute of limitations is twenty years starting from the date of order.

2. The supplier ensures that it is not aware of any rights of third parties that would impair the manufacture or sale of the product.

3. The supplier shall inform PowerWind without undue delay in the event that third parties make claims of forbearance and compensation for damages against it based on the manufacture and sale of the product or when it becomes aware in some other way of external, opposing property rights.

4. The supplier shall defend PowerWind against the claims of violation unless PowerWind chooses to defend itself. In this case the supplier shall bear the costs and expenses incurred by PowerWind. The supplier shall hold PowerWind harmless for all damages, costs, claims and expenses (including legal costs) incurred by PowerWind based on the claim of violation. The right of PowerWind to withdraw from the contract or demand compensation for damages according to the statutory provisions remains unaffected by this.

5. Should in the course of the cooperation with the supplier intellectual property rights (such as but not limited to patents and design rights) arise or should existing property rights be contributed by the supplier, the contractual partners are obligated to reach a separate agreement with reference to the registration and usage of the work result. In particular, the supplier shall make use of employee inventions within its company. PowerWind shall be granted universally applicable, irrevocable and comprehensive rights to usage of unlimited duration and at no charge. Insofar as the work results are protected by the copyrights of the supplier, it will grant PowerWind the non-exclusive, irrevocably transferable, universally applicable right with unlimited duration to make use of these work results at its discretion, especially to multiply, distribute, exhibit, modify and process these.

**§ 11 Full Reservation of Title, Accessory Parts, Tools, Confidentiality**

1. PowerWind shall retain title to any items PowerWind makes available to the supplier. Any processing or transforming of such parts by the supplier shall be made on behalf of PowerWind. If items subject to PowerWind's reservation of title are processed together with goods not belonging to PowerWind, PowerWind shall acquire co-ownership of the new item at the ratio of the value of the item belonging to PowerWind (purchase price plus value-added tax) to the other items processed at the time of such processing.

2. If PowerWind item is inseparably mingled with other items not belonging to PowerWind, PowerWind shall acquire co-ownership of the resulting item at the ratio of the value of the item subject to PowerWind's reservation of title (purchase price plus value-added tax) to the other items mingled at the time of such mingling. If the mingling is performed in a manner that turns the supplier's object into the main component, it is agreed hereby that the supplier shall transfer pro-rated ownership to PowerWind;

<b>PowerWind</b>	<b>General Procurement Terms</b>		
	No. 63818	Language: en	Revision: 00

the supplier shall retain sole ownership or co-ownership on behalf of PowerWind.

3. PowerWind shall retain title to all of PowerWind tools; the supplier shall use the relevant tools solely for manufacturing the goods PowerWind ordered. The supplier is obligated to purchase fire, water, and theft replacement cost insurance coverage for the tools belonging to PowerWind, in the amount of the purchase price for new tools, at its own expense. At the same time, the supplier now assigns all claims for indemnification under such an insurance policy to PowerWind and PowerWind hereby accept such assignment. Each party shall bear half of the costs for maintenance and repair work in regard to the tools. However, if and to the extent such costs are due to defects in goods manufactured by the supplier or due to mishandling by the supplier, its employees or other auxiliary persons of the supplier, such costs shall be exclusively borne by the supplier. The supplier shall notify PowerWind immediately of any defects; if the supplier's failure to do so is negligent, he shall be liable for any damage incurred due to this.

4. The supplier has the obligation to maintain strict confidentiality regarding all figures, drawings and calculations, as well as any other documentation and information made available by PowerWind. Such records may be made available to third parties only with express approval by PowerWind. This confidentiality obligation shall survive the termination of this contract for three further years; it shall expire if and when the manufacturing knowledge embodied in the figures, drawings, and calculations, as well as any other documentation made available has become public knowledge.

5. To the extent that rights of retention available to PowerWind under paras 1. and/or 2. of this § 11 exceed the purchase price of all to PowerWind unpaid items subject to reservation of title by more than ten percent, PowerWind shall have the obligation to surrender such reservation of title at the suppliers' request at choice of PowerWind.

**§ 12 Jurisdiction, Choice of Law, Place of Performance**

1. To the extent that the supplier is a businessperson, the domicile of PowerWind shall be the place of jurisdiction; however, PowerWind shall also have the right to sue the supplier at its domicile.

2. The laws of the Indian legislation shall exclusively apply (under exclusion of the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods).

3. Unless the orders stipulate otherwise, the domicile of PowerWind shall be the place of performance.

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