General conditions of use for the supplier portal of GEA Heat Exchangers

The following conditions are applicable for the use of the GEA Heat Exchangers Supplier Portal - called GHX-Supplier Portal hereinafter - within the framework of the business relationship between the signing supplier on the one hand and GEA Heat Exchangers GmbH (here simultaneously acting on behalf of all companies, in which it itself or its associates have severally or jointly, directly or indirectly a majority stake - hereinafter uniformly called GHX) - on the other hand. The validity of conditions of the supplier stands hereby excluded. The supplier agrees to this exclusion.

1. Purpose and scope of application

   With the GHX Supplier Portal ONVENTIS, a software of the company ONVENTIS GmbH Stuttgart, GHX is making a communication platform available for the business relationship between GHX and its suppliers. The GHX Supplier Portal serves to publish and process electronic tenders and auctions, to transmit order data together with appropriate documents (drawings, specifications etc.), to exchange data with the supplier in the context of the order processing (order confirmation, delivery advice etc.) as well as to handle third-party service. The use is free for the suppliers and is regulated in these conditions for use. These general conditions of use have been stored in the GHX Supplier Portal for any time accessibility.

2. Supplier responsibilities

   2.1 The supplier shall abide by the present conditions for use. The supplier, within the scope of his internal relationship, shall obligate his company administrator and all further users to abide by these conditions of use.

   2.2 The supplier shall designate or even create in the system only natural persons with appropriate expertise as company administrator and users. Before creation, he shall grant the power of representation to these persons to issue and accept declarations of intent on his behalf within the framework necessary for carrying out business on the GHX Supplier Portal. GHX can demand a proof of the power of representation for each user registered by the supplier.

   2.3 The supplier shall be responsible for the registration and the continuous maintenance or blocking of his users on the GHX Supplier Portal. He shall thereby ensure that the requirements of the Federal Data Protection Act are observed.

   2.4 The supplier shall not manipulate the services of the GHX Supplier Portal in any form, in particular the supplier shall not transact any inputs or transmit any data which contain or can contain viruses, Trojans or similar executable program codes, or which are capable of damaging, seeing, trapping, forwarding or deleting data or of providing unauthorized access to data systems or areas. The supplier shall not knowingly or unknowingly use mechanisms, software or other routines, which could disturb or excessively load the processes of the GHX Supplier Portal.

2.5 The supplier shall not enter, save or transmit any hyperlinks or contents, to which he is not authorised, in particular, if these hyperlinks or contents violate the confidentiality obligations or are illegal; or circulate advertisements or unsolicited emails (the so called "Spam") or unfounded warnings of viruses, malfunctioning or similar matters or invite to participate in lotteries, multilevel marketing, chain-letters, Ponzi schemes and similar acts.

2.6 All access data shall be secured against the knowledge, access and use by third parties. This shall particularly be applicable for employees of the supplier, who have not been designated as company administrator or users. All actions and uses of the access data of a company administrator or a user shall be considered to be those of the supplier and shall be ascribed to him.

2.7 The supplier shall not change, publish, save or copy the GHX Supplier Portal or any part thereof, or produce, distribute, advertise derived contents or utilize the services and information in other way than absolutely necessary for processing the contracts with GHX. The supplier shall not violate industrial property rights, copyrights or other similar rights of other suppliers or contractors.

2.8 GHX shall not be obligated to archive data and documents. The supplier shall archive data and documents required for statutory or tax purposes by suitable technical measures and at his own cost.

2.9 In the context of the use of the GHX Supplier Portal, the supplier shall take into account all rights of GHX and third parties, in particular copyrights, rights to names and trademark rights.

2.10 The supplier shall refrain from abusing the GHX Supplier Portal. The supplier shall particularly refrain from every attempt to access the data on the GHX Supplier Portal pertaining to other suppliers not generally accessible.

2.11 Information shall at no time be distributed, rented or left in the possession of third parties or commercially used in any other manner.

3. Technical prerequisites

3.1 As a prerequisite for the participation in the GHX Supplier Portal, the supplier must have
- MS Windows PC with Microsoft Internet Explorer version 5.5 or higher
- Java - script activation in Internet Explorer (prerequisite: installation of Microsoft VM or Sun Java 1.4.2)
- Internet access (recommended speed: at least 64 kbit/second)

3.2 The supplier shall at his own risk and cost ensure the availability of properly functioning computer configuration and an Internet connection, which enable him to use the GHX Supplier Portal.

3.3 The supplier shall himself carry the risks arising out of the participation in the GHX Supplier Portal of the transmission of his own declarations of intent and information to the GHX Supplier Portal or fetching declarations of intent and information from the GHX Supplier Portal. GHX shall accordingly be responsible neither for the access of the supplier to the Internet nor for the data transmission phase between the GHX Supplier Portal and the supplier.

3.4 GHX shall have the sole discretion as regards the decision regarding the maintenance of the GHX Supplier Portal and granting and maintaining an access to the GHX Supplier Portal for the supplier. In addition, GHX shall have the authority to temporarily or permanently exclude the supplier from the use of individual services of the GHX Supplier Portal.

4. Scope of these conditions of use

The present general conditions of use agreed upon between GHX and the supplier shall be applicable in addition to every framework agreement or individual order as well as all other business processes and data exchanges between the supplier and GHX, which are initiated or developed via one or more functions of the GHX Supplier Portal.

5. Access data and registration

5.1 The access to and the use of the GHX Supplier Portal shall be possible only to the registered suppliers and users for the reasons of security of the business correspondence. The supplier shall provide complete and truthful information for the registration and update the same immediately on the Portal in case of any subsequent changes to the same. GHX shall have the right to check the registration data of the suppliers using the data ascertainment with the supplier or third parties.

5.2 Suppliers, who want to participate in the GHX Supplier Portal, shall receive a login name and password. The supplier shall only be able to fetch or save any declarations and documents, such as, e.g., inquiries, orders, contracts and invoice advices using the GHX Supplier Portal by means of the login name and password. This login name shall be valid for all employees of the supplier, no employee based login names shall be provided.

5.3 At the time of the first access, the supplier shall change the password provided by GHX to a password known only to him comprising a combination of numerals and characters. The supplier shall immediately change the password on suitable occasions (such as, e.g., when an authorised employee retires, information of the access data falls in the hands of unauthorized persons etc.). In absence of such concrete occasions, the supplier shall change the password at an interval of max. 6 weeks. After each use or before interrupting any use session the supplier shall log-off from a password protected area. The supplier shall make the access data accessible only to employees who are authorised to use the GHX Supplier Portal. The supplier shall obligate the persons to whom he reveals the access data to confidentiality and the proper use of the GHX Supplier Portal. On request the supplier shall inform GHX about the persons to whom he had made the access to the GHX Supplier Portal available and at what time. Should the supplier come to know that the access data has fallen in the hands of unauthorised persons or the GHX Supplier Portal is being used in an unauthorised manner, or should he become aware of any concrete circumstances enabling an unauthorised use of the GHX Supplier Portal, he shall immediately inform GHX about the same in writing. The adherence to the security measures agreed upon in this paragraph 5.3 shall be demonstrated by the supplier in a suitable manner to GHX on request.

5.4 The supplier shall make sure that the receipt of emails under the email address specified by him in the user administration is guaranteed at any time.

5.5 The supplier shall provide complete and truthful information and enter subsequent changes relevant to the same immediately in the GHX Supplier Portal on-line (or, if it is not possible to do so, communicate them to GHX by email).

5.6 When using the GHX Supplier Portal, the supplier shall adhere to all applicable statutes and provisions.

5.7 GHX shall have the right to make the data from the company profile available to all GEA companies for the duration of the use of the GHX Supplier Portal.

5.8 Supplier can request in writing the deletion of his registration and all the data contained in the database of the supplier portal at any time and without specifying any reasons. This data shall be immediately deleted provided it does not conflict with the handling of current contractual relationships.

6. Data protection/freedom from viruses

6.1 The data provided by GHX to the supplier in the context of the GHX Supplier Portal (name, address, email address, contact person etc.) shall be collected, processed and used under consideration of the applicable data protection law without prior consent from GHX only to the extent that it is necessary for establishing, defining and/or modifying the contents of the agreement.

6.2 With the exception of premeditation or gross negligence GHX shall not be responsible for the freedom of the documents saved on the GHX Supplier Portal from viruses. The supplier shall install appropriate security devices and up-to-date virus scanners for his own protection as well as for the prevention of computer viruses from getting to the GHX Supplier Portal.

7. Confidentiality

The supplier shall keep all knowledge of professional secrets acquired in the context of the business relationship with GHX - these need not be explicitly revealed by GHX as such - or similar information confidential. The supplier shall particularly treat all the information communicated by GHX, in particular, calculations, diagrams, plans, tender documents, requirement specifications, drawings and models (irrespective of whether the communication was in electronic, oral or physical form) strictly as confidential, protect it from unauthorized access or unauthorized use and use it for matters related to GHX only. These obligations shall also apply to all the documents, which the supplier has downloaded, printed or otherwise saved and copied from the GHX Supplier Portal. These obligations shall continue to exist even after the execution of the respective individual contracts; they shall cease to exist if and only to the extent that the respective information conveyed is generally known or can be obtained without violating this agreement.

8. Formal requirements

   The declarations exchanged via the GHX Supplier Portal shall, as a rule, not have any signature. Both parties acknowledge that the declarations exchanged via the GHX Supplier Portal on both sides shall be legally binding even without signature and every written form agreed upon or designated by an anticipated act shall be fulfilled by electronically transmitted declarations via the GHX Supplier Portal.

9. Declarations of intent/orders/inquiries/auctions/delivery note

   9.1 The supplier shall visit the GHX Supplier Portal at least once a day on working days (Mon - Fri) to check if any notification has been received from GHX and to process it and to respond to it immediately in the context of the work-flow applicable to the respective event. Further, the supplier shall always execute the imminent pending process steps pursuant to the work-flow applicable to the respective event without delay. If an access to the GHX Supplier Portal fails, the supplier shall inform GHX about it immediately. Independent of the above obligations, the declarations of intent exchanged via the GHX Supplier Portal shall be considered as received on the day on which they are available to the recipient to access. If a declaration of intent is available to access on a working day only after 16:30 clock, the access shall be considered to have been effected only on the following working day, unless the addressee of the declaration of intent already has the knowledge of its contents earlier.

   9.2 For the purpose of uninterrupted execution of the order and the documentation as much as possible, the supplier hereby stands committed to confirm the orders from GHX promptly, however, not later than two working days to GHX by activating the fields designated for order confirmation on the GHX Supplier Portal unconditionally vis-à-vis GHX. If required, the supplier shall indicate in the order confirmation the name of the person in his organisation responsible for the processing of the respective order together with the telephone number and email address. In individual cases, GHX can grant the supplier the option of adjusting the quantity, price, delivery date at its own discretion.

   9.3 The terms of contract (general terms and conditions of purchase among other things) of the respective orderer for the supplier shall be visible within a tender or auction. Bids of the supplier shall be based on these and shall be binding in any case. With the acceptance of the supplier's bid by the orderer, the contract shall materialise at the specified terms of contract.

   9.4 GHX shall have the right to float inquiries, tenders, auctions via the GHX Supplier Portal and to invite suppliers to submit their bids. All bids submitted by the supplier in this connection via the GHX Supplier Portal shall be binding for the duration of the period specified by the supplier on the GHX Supplier Portal, if, however, no period was specified for a period of 12 months and it shall not be possible to withdraw the same unilaterally.

   9.5 Unless defined in the joint process definition otherwise, the supplier shall print the delivery notes that he can generate using the GHX Supplier Portal with bar code and include them with the goods as well as print the labels that he can generate with bar code and paste them on the goods in such a way that they facilitate the subsequent mechanical scanning of the data as well as their general readability.

10. Invoices

10.1 Unless defined in the joint process definition otherwise, the supplier shall raise invoices to be raised by him electronically via the GHX Supplier Portal so that they can be pre-entered by GHX in its in-house SAP system. The electronic invoice shall only correspond to an invoice advice and shall not be entitled to input tax deduction.

10.2 Unless otherwise defined in the joint process definition, the supplier shall send the individual invoices as well as the consolidated report, which he can generate on the GHX Supplier Portal, to the GHX in-box. The individual invoices in paper-form shall represent the legally valid invoice document. Agreed upon cash discount periods shall start with the receipt of the respective invoice by GHX by post at the earliest.

11. Changes to the general conditions of use

11.1 GHX shall have the right to change or to supplement the conditions of use for the GHX Supplier Portal with an appropriate notice period. Changes or supplements shall be communicated to the supplier in writing, by email or in other suitable form. Should the supplier not accept the changes, he shall inform GHX about it immediately. If the GHX Supplier Portal is however continued to be used by the supplier after the receipt and entry of the changes into force, the changes shall be considered as accepted by the supplier.

11.2 If the supplier objects to the validity of the changed conditions of use, GHX shall have the right to terminate this agreement without notice and to cancel the registration in the GHX Supplier Portal at its own discretion.

12. Liability

12.1 The supplier shall be responsible for all the damage caused to the GHX Supplier Portal (e.g. by caused virus attacks) by him, his legal representatives or executing aides or as a result of a violation of his obligations pursuant to § 3 ff. and § 6 ff of these general conditions of use. The supplier shall absolve GHX from all third party claims resulting from violation of industrial property rights. The same shall be applicable for third party claims resulting from the use of illegal contents.

13. Court of jurisdiction, applicable law, severability clause

13.1 Any disputes arising from and in connection with these general conditions of use (including its coming in force and its validity) shall be settled under the use of material German Law and before a competent court in Bochum. Unless otherwise agreed upon in the respective individual contract or the relevant framework agreement which it directly or indirectly refers, this shall also be applicable to all individual contracts signed between the supplier and GHX using the GHX Supplier Portal.

13.2 Should one or more provisions of these general conditions of use be ineffective or impracticable fully or partly, it shall not affect the validity of the remaining provisions. In place of the ineffective or impracticable condition, an analogous

provision, which comes closest to the economic purpose of the ineffective or impracticable provision, shall become applicable.

The supplier shall accept these general conditions of use with the signature of the company management or an authorised representative. The agreement regarding the use of the GHX Supplier Portal shall come into force with the clearance of the supplier for the use.

Place, Date:

Place, Date:

_____

Supplier
Stamp, Signature

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GHX
Stamp, Signature