

GENERAL TERMS AND CONDITIONS OF PURCHASE OF STEULER-KCH MATERIALS GMBH

1 General

- 1.1 Our General Terms and Conditions of Purchase shall apply exclusively; we shall not accept general terms and conditions of business of suppliers which conflict with or are contrary to our General Terms and Conditions of Purchase, unless we have expressly accepted their applicability in writing. Our General Terms and Conditions of Purchase shall even apply if we accept and pay for delivery of a supplier's products and services in knowledge of the fact that his conditions conflict with or are contrary to our General Terms and Conditions of Purchase or deviate from them.
- 1.2 Our General Terms and Conditions of Purchase shall also apply to all future deliveries and services provided to us by a supplier until such time as our new General Terms and Conditions of Purchase shall come into force.
- 1.3 Any deviations from the General Terms and Conditions of Purchase set out hereinafter shall require our written confirmation in order to become effective.

2. Quotation and Conclusion of Contract

- 2.1 Supplier's attachments of samples, cost estimates, as well as quotations shall be free of charge for us, unless expressly agreed otherwise. Cost estimates shall be binding.
- 2.2 Enquiries shall be without engagement and non-binding.
- 2.3 Orders, contracts and delivery call-offs as well as their amendments and supplements shall require written form or text form.
- 2.4 Amendments and supplements becoming indispensable in the execution of the delivery or service, as well as collateral agreements of any kind shall be notified immediately by the supplier and shall require confirmation by our purchasing department in the form set out in 2.3 in order to become effective.
- 2.5 Orders placed by us shall be deemed accepted unless the supplier raises objections within one week after receipt of the order.

3. Delivery

- 3.1 Agreed dates and time limits shall be binding. Whether deliveries are deemed to have been made on time shall be judged by the date at which we receive the goods. If delivery terms other than "free buyer's site" (DDU or DDP according to Incoterms 2000) have been agreed, the supplier shall be under the obligation to prepare the goods for shipment on time, in due consideration of the time required for loading and dispatch to be agreed with the forwarding agent.
- 3.2 In the event that the supplier undertakes erection and assembly/installation and provided that nothing to the contrary has been agreed, the supplier shall bear all incidental expenses incurred, such as travel costs, costs for the provision of equipment as well as daily allowances.
- 3.3 The supplier is under the obligation to advise our purchase department immediately as soon as he foresees any difficulty in adhering to the agreed delivery date.
- 3.4 The unconditional acceptance of any delayed delivery or service shall not imply our waiver of damage claims to which we may be entitled due to the delay in delivery or service.
- 3.5 Partial deliveries shall not be allowed unless expressly agreed by us.
- 3.6 The determination of quantities, weights and measures shall be based on the values identified by our incoming goods inspection department, unless other proof is available.
- 3.7 The supplier is under the obligation to state our order number on all delivery documents and invoices; in the event that the supplier fails to comply with this obligation, we shall not be liable for delays in the handling and processing of such documents.

4. Force Majeure

- 4.1 Force majeure, industrial disputes, interruption of operations not due to our fault, riots, government actions, as well as all other inevitable circumstances shall entitle us – notwithstanding our other rights – to rescind the contract in full or in part, to the extent that these circumstances are not of negligible duration or that they entail a considerable reduction of our purchase requirements.

5. Prices, Quotation, Conditions of Payment

- 5.1 Agreed prices are exclusive of the statutory VAT.
- 5.2 Unless specific provisions have been agreed upon, prices shall be DDU or DDP to our premises in Siershahn (Incoterms 2000), or to a place of receipt freely determined by us, incl. packing and further charges.
- 5.3 Unless agreements to the contrary have been made, payment shall be effected 14 days following the date of delivery or service as well as receipt of the invoice less 2 percent discount, or within 45 days net.
- 5.4 We shall have the right to offset suppliers' claims for payment against any such counter-claims to which we or any of our affiliated companies (in which we hold an ownership greater than 50 percent) are entitled.

6. Passage of risk

- 6.1 The supplier shall bear the material risk until receipt of the goods by us or by our agent in the place to which the goods are to be delivered pursuant to the order.
- 6.2 In the event of deliveries including erection or assembly/installation and in the case of services being rendered the risk shall pass to us upon acceptance of the performance. Formal acceptance shall be required. Acceptance by way of proper use shall be excluded.

7. Claims based on Defects

- 7.1 Acceptance shall be subject to an examination for faultlessness, especially also for correctness, completeness and suitability. We shall have the right to inspect the object of the contract to the extent and as soon as it is reasonable in the ordinary course of business; we shall give notice of any defects found immediately after their discovery. To this extent the supplier shall waive the objection to a delayed notification of defects.
- 7.2 The legal stipulations regarding defects in quality and in title shall be applied unless otherwise provided below.
- 7.3 In the event that samples have been provided, the properties of such samples shall be deemed indicative of the goods' quality. All delivered goods must conform to the samples provided.
- 7.4 We shall have the right to select the type of post-fulfilment. The supplier shall have the right to refuse the type of post-fulfilment selected by us pursuant to Article 439, Para. 3 and Article 635 Para. 3 BGB [German Civil Code].
- 7.5 In the event that the supplier does not immediately begin with the correction of the defect after our request, we shall be entitled to undertake such correction ourselves or to have same undertaken by a third party at the expense of the supplier. Claims for defects in quality shall become statute-barred after a period of 2 years, unless a longer period is legally stipulated. In the event that the delivered products were used in a structure in accordance with their customary use and that they caused the structure's deficiency, a limitation period of 5 years shall apply.
- 7.6 In the event of defects in title the supplier shall indemnify us from any third-party claims. Claims for defect in title shall become statute-barred after a period of 10 years.
- 7.7 With respect to parts of the delivery or service that were reconditioned, repaired, or exchanged within the warranty period, the warranty period shall start anew at the moment the supplier has completely satisfied our claims for performing a contract fulfilment measure.
- 7.8 The supplier shall bear the costs that incur as a result of defective deliveries or services, especially with regard to transportation, travelling, labour, material, or inspection.
- 7.9 If, as a result of the defectiveness of deliveries or services, we take back products built and/or sold by us, or if therefore our customers reduced the purchase price, or if claims of whatever nature are asserted against us on that account, we shall reserve the right to request reimbursement from the supplier, whereby an otherwise required notice is not needed to assert our warranty claims.
- 7.10 We are entitled to demand a reimbursement from the supplier for expenses incurred because our customers may claim against us the reimbursement of expenses incurred for the purpose of post-fulfilment, especially with regard to transportation, travelling, labour, and material.
- 7.11 Notwithstanding the provision set out in Article 7.5, in the cases of Articles 7.9 and 7.10, the period of limitation shall end at the earliest two months after the date at which we satisfied the claims asserted against us by our customer, however it shall end five years and 2 months after receipt of the deliveries and services from the supplier at the latest.
- 7.12 If a material defect becomes evident within 6 months after the passage of risk, it is alleged that the defect was already present at the time of passage of risk, unless this is in contradiction to the nature of the product or defect concerned.

8. Provision of Parts and Materials

Parts or materials provided by us shall remain our property and may only be used as agreed. Any processing and assembly/installation work is executed for us. It is agreed that in relation of the value of the parts and materials provided by us to the value of the entire product we shall become a co-owner of the products that are manufactured using our parts and materials and which will be kept safe for us by the supplier.

9. Product Liability, Indemnity, Insurance

- 9.1 To the extent that the supplier is liable for a product damage, he shall be obliged to indemnify us and hold us harmless against claims for damages from third parties upon our first request, inasmuch as the cause of the damage lies within the scope of his control and organisation, and inasmuch as he is liable vis-à-vis third parties.
- 9.2 The supplier's liability for damages within the meaning of Para. (1) also obliges him to reimburse any expenses in accordance with Articles 683, 670 of the German Civil Code and Articles 830, 840, 426 of the German Civil Code, insofar as such expenses incur as a result of or in connection with a recall action that we have initiated. We shall inform the supplier - where possible and reasonable - with regard to the content and scope of recall measures to be implemented, and provide him with the opportunity to submit his own statement. Other statutory rights shall remain unaffected.

- 9.3 The supplier undertakes to maintain at his own expense product liability insurance with an insured lump sum of a minimum of € 1 million per bodily injury/damage to property, including so-called extended product liability, and to furnish proof to this effect upon request.
- 10. Confidentiality**
- 10.1 The supplier undertakes to maintain strict secrecy towards third parties with regard to any business or technical information and documents to which he gains access in the context of the business relationship and which require confidentiality, as long as and to the extent they are not public knowledge, and to use them exclusively in order to furnish the deliveries and services ordered. In the event that subcontractors are involved, such subcontractors shall be placed under the same obligation.
- 10.2 With respect to the indication of references and to publications, the supplier may not disclose our firm name and trademark unless he has obtained our prior written consent to this effect.
- 11. Intellectual Property Rights**
- 11.1 The supplier guarantees that the rights of third parties within the Federal Republic of Germany shall in no way be infringed in connection with his delivery.
- 11.2 In the event of a third party raising claims against us in this respect, the supplier shall be obliged to indemnify us and hold us harmless against any such claims upon our first written request; otherwise we shall be entitled to conclude any agreements with the said third party and, in particular, to come to a settlement with such party, all without the supplier's consent.
- 11.3 The supplier's obligation to indemnify us and hold us harmless relates to all expenses incurred by us of necessity as a result of or in connection with claims made by a third party.
- 11.4 The period of limitation shall be ten years, commencing from the conclusion of the contract.
- 12. Place of Performance, Legal Venue, Applicable Law**
- 12.1 The place of performance shall be the place to which the goods are to be delivered in accordance with the contract.
- 12.2 The exclusive legal venue for all claims against merchants and legal entities incorporated under public law which result either directly or indirectly from the contractual relationship shall be, upon our own discretion, our head office location. However, we shall be entitled to also sue at any other court of competent jurisdiction.
- 12.3 All contractual relationships shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).