



S.M.A. Metalltechnik GmbH & Co. KG

General Terms and Conditions of Purchase (Status September 2022)

1 Scope of Application

Subject to deviating individual agreements, we shall order exclusively in accordance with the following General Terms and Conditions of Purchase. Conflicting or deviating General Terms and Conditions of the supplier shall not become part of the contract even if we accept the delivery without reservation. All agreements made between us and the supplier for the execution of this contract are set out in writing in this contract. There are no verbal ancillary agreements. Our General Terms and Conditions shall also apply to all future transactions with the Supplier. The German wording shall prevail for the interpretation of the contract.

2 Non-Disclosure Agreement

We reserve the property rights and copyrights to the illustrations, drawings, invoices and other documents made available to the supplier. They must not be made accessible to third parties without our express written consent. The documents shall be used exclusively for manufacturing based on our order. After the order has been processed, the documents shall be returned to us without being requested to do so. This shall apply in the same way insofar as the supplier does not accept our offer. They shall be kept secret from third parties unless the manufacturing expertise contained in the documents is generally known.

3. Acquisition of means of production (means of production, gauges, devices, machinery and equipment)

The following provisions shall apply only to the acquisition of means of production (tools, gauges, fixtures, machines and equipment) and other capital goods (hereinafter uniformly referred to as "means of production"):

3.1 Upon full payment of the purchase price, the means of production shall become our property. Any prolonged or extended retention of title by the supplier to the means of production is excluded. To the extent that we have agreed with the supplier to make advance payments, the supplier shall transfer ownership of the respective means of production or components of means of production (i.e. the successively manufactured parts of these means of production) to us upon making the first payment, subject to the condition precedent of full payment for the respective means of production or component of means of production (means of production and components of means of production are hereinafter uniformly referred to as "means of production"). We shall acquire ownership of the respective means of production with each stage of processing. Handover shall be replaced by the supplier lending or holding the means of production for manufacturing purposes. To the extent that it is not possible to transfer ownership of the means of production to us, for whatever reason (with the exception of non-payment or incomplete payment of the price for the respective means of production), the supplier shall be obliged to take all necessary and possible steps to place us in the same position as if we had acquired ownership of the means of production; this shall include, in particular, the ability for us to use and exploit the means of production. If we should lose ownership of the means of production against or without our consent (e.g. through combination with another item), the supplier hereby already declares its consent to the retransfer of ownership of the means of production to us. In all other respects, the supplier shall make its best efforts to ensure that we recover ownership of the means of production.

3.2 The supplier shall do everything in its power to defend against encroachments against our property by third parties (e.g. compulsory execution measures, removal of the means of production or other impairments of our property). If third parties encroach on our ownership of the means of production, the supplier shall promptly notify us thereof by e-mail. In particular, the supplier is not permitted under any circumstances to transfer or hand over our means of production to third parties, to enter a lease relationship in this respect or to grant any rights thereto. The supplier shall compensate us for all damage and costs incurred due to a culpable breach of these obligations and due to intervention measures with third parties necessitated thereby.

3.3 We can demand the surrender of the respective means of production, all accessories and all associated documents (including the design drawings) at any time.

3.4 Except in the event of non-payment or incomplete payment of the remuneration for the work, the supplier shall not be entitled to any rights of retention within the meaning of Sec. 273 and Sec. 320 of the German Civil Code (BGB) with respect to the means of production. The Supplier's right to possession of the means of production within the meaning of Sec. 986 of the German Civil Code (BGB) shall be based exclusively on the loan or custody for manufacturing purposes.

3.5 The supplier shall inform us of the exact manufacturing location of the means of production immediately after placing the order. Any relocation of the means of production or parts thereof to another location shall always require our prior express written consent.

4 Prices - Terms of delivery - Terms of payment

The price specified in the order is binding. Unless otherwise agreed in writing, the price includes delivery DDU (Incoterms 2010), including packaging. Reusable packaging shall only be used by special agreement. The number and designations of all reusable packaging delivered shall be specified per material as a separate item on the delivery note. We can only process invoices and delivery notes if they show the contents specified in the logistics specifications, in accordance with the specifications. We shall be entitled to the statutory rights of set-off and retention.

5 Delivery Period

The delivery Period specified in the order or delivery schedules is binding. The supplier is obliged to promptly notify us in writing if circumstances occur or become apparent to him which indicate that the delivery period specified on the order or delivery schedules cannot be met.

6 Default in delivery - compensatory damages due to delay in delivery

If the supplier is in default in delivery, we shall, in addition to the claim for delivery, also be entitled to compensatory damages incurred by us due to the delay, unless the supplier proves that it is not responsible for the delay.

We shall be entitled to further rights to damages instead of performance due to the delay after the fruitless expiry of a reasonable grace period, unless such grace period is dispensable for the reasons stated in the law. Instead of damages in lieu of performance, we shall be entitled to demand reimbursement of the expenses which we have incurred and were entitled to incur in reliance on the timely receipt of the item, unless its purpose would not have been achieved even without the timely delivery of the item.

7 Liability for breaches of duty

The supplier shall obligate himself to deliver products that are free of material defects and defects of title. If there is a quality assurance agreement between us and the supplier, this agreement shall be decisive for the obligations owed by us to inspect the products and to give notice of defects. In the absence of such an agreement, we shall remain obliged to inspect the products and to give notice of defects. We shall be entitled to demand subsequent performance from the supplier by way of rectification of defects or delivery of a defect-free item, at our discretion. The costs of subsequent performance shall be borne by the supplier. This shall also include our additional expenses for the processing of substantiated material defects or defects of title. The supplier shall be allowed to provide evidence that the actual expenses are not incurred at all or are significantly lower than the lump sum claimed. If we are entitled to further claims for reimbursement of expenses, these shall remain unaffected. In the case of defects that cannot be remedied, we shall be entitled to reduce the purchase price or to withdraw from the contract immediately; in the case of defects that can be remedied, we shall be entitled to do so only after the fruitless expiry of a reasonable grace period, unless this is dispensable for the reasons stated in the law. In addition to the right to withdraw from the contract or to reduce the purchase price, we shall be entitled to claim damages instead of (entire) performance in accordance with the statutory provisions. Instead of damages in lieu of performance, we shall be entitled to claim compensation for expenses incurred in reliance on the receipt of the defect-free performance. If a third party asserts rights to the delivered products and if a claim is made against us by the third party in this respect, the supplier shall be obliged to indemnify us against these claims upon first written request. The indemnification obligation relates to all expenses necessarily incurred by us as a result of or in connection with the claim by a third party. The supplier shall be liable in accordance with the statutory provisions for damage caused to us as a result of the defectiveness of



the purchased item to legal assets other than the purchased item itself and to our other assets.

8 Infringement of other Contractual Obligations

The supplier shall be liable in accordance with the statutory provisions for losses incurred by us due to the supplier's violation of other contractual obligations. Insofar as the defectiveness arises after delivery to us as a result of incorrect public statements by the supplier, in particular in advertising or in the case of labeling concerning certain properties, and we are held liable by our customer as a result of the defectiveness thus established, the supplier shall be liable to us for damages and shall be obligated to indemnify us against these claims upon first request. This shall only not apply if the supplier proves that it is not responsible for the incorrectness of the statements or the labeling or if we had knowledge of the incorrectness prior to the resale to the customer.

9 Statute of Limitations for Claims for Defects

Claims based on material defects shall become statute-barred after 60 months, calculated from the date of delivery to us. Recourse claims in the supply chain according to §§ 445a, 445b BGB and §§ 478, 479 BGB remain unaffected. Claims based on defects of title are subject to the general statute of limitations.

10 Product liability - Indemnification - Liability insurance coverage

Insofar as the supplier is responsible for product damage, it shall be obliged to indemnify us against claims for damages by third parties upon first request to the extent that the cause lies within its sphere of control and organization and it is itself liable in relation to third parties. In this scope, the supplier shall also be obliged to reimburse any expenses pursuant to Secs. 683, 670 of the German Civil Code (BGB) arising from or in connection with a recall action carried out by us, unless the claim follows from Secs. 830, 840, 426 of the German Civil Code (BGB). We shall inform the supplier about the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment. The supplier shall undertake to maintain a product liability insurance with a lump sum coverage of at least € 5 million per personal injury/property damage, unless a higher coverage is owed according to a possibly existing quality assurance agreement.

11 International Purchase Contracts

If the supplier is domiciled outside Germany, German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods. In this case, the following special provisions shall apply with regard to the written form and the Supplier's liability for breaches of contract - in deviation from the above Terms and Conditions of Purchase: Amendments to or terminations of the contract shall be made in writing. This also applies to agreements on the abandonment of this written form agreement. In the event of a culpable breach of contract, the supplier shall also be liable to us for any damage unforeseeable upon conclusion of the contract. In the event of delivery of non-conforming products, we may demand a replacement delivery from the supplier if the non-conformity constitutes a material breach of contract. A material breach of contract shall be deemed to have occurred, inter alia, if the products are manufactured or distributed only by the supplier or if it is unreasonable for us to acquire the products from a third party for any other reason. In the event of delivery of non-conforming products, we may declare the contract avoided if the non-conformity constitutes a material breach of contract. A breach of contract shall be deemed to be material if, inter alia, the damage is difficult or impossible to estimate, non-material damage has occurred, the claim for damages is excluded due to Article 79 (5) of the CISG, in the case of continuing obligations, confidence in the reliability of the supplier has been permanently impaired or if the lack of conformity of the products reaches such an extent that it is no longer possible to sell the products in the ordinary course of business.

12 Place of Jurisdiction - Place of Performance

Is the supplier a merchant, our place of business shall be the place of jurisdiction; however, we shall also be entitled to sue the supplier at the court of his place of residence. The place of performance is our place of business.