

## General Terms and Conditions of Purchase (Version: 04/2008)

### § 1 General Notes, Scope

- (1) Our conditions of purchase apply to all goods delivered and services rendered to us. They are valid exclusively; any conflicting conditions or supplier's conditions that are not in line with our conditions of purchase are not accepted and not included, unless explicitly agreed in writing. Our conditions shall also apply if we accept delivery without reservations despite being aware of the supplier's diverging conditions.
- (2) Orders, contracts, changes, agreements and other declarations are not binding unless made or confirmed by us in writing. Transmission by means of telecommunication shall suffice to comply with the written form. Computer-generated purchase orders explicitly marked as such shall be valid without a signature. In the event that the supplier does not agree with one of the conditions of our order, he shall submit a written statement detailing his reasons. An order confirmation stating diverging conditions shall not suffice to change the conditions included in the purchase order.
- (3) Any correspondence shall be done with the purchasing department. Any arrangement made with other departments, insofar as they concern changes to stipulations in the agreement, are subject to the express written confirmation of the purchasing department in the form of an amendment to the contract.
- (4) Our conditions of purchase shall only apply for persons acting in their commercial or self-employed function (business people) when signing the contract.
- (5) Our conditions of purchase shall also apply to all future dealings with the supplier.

### § 2 Quotation, Construction Documents

- (1) If the supplier fails to accept our purchase order within 2 weeks after receipt we shall have the right to revoke the order. Our purchase orders, contracts and call-offs shall be considered accepted if the supplier does not object in writing within 2 weeks after receipt.
- (2) Within reason, we can write to the supplier to request changes, amendments or modifications with regard to the products, volumes, recipients, specifications, drawings, drafts and delivery dates. Any consequences resulting from this, in particular higher or lower costs, shall be dealt with in mutual agreement.
- (3) We shall have the right to request the free and immediate provision of all patterns, models, templates and documents used by the supplier for the execution of the order. They shall pass into our ownership if the order is placed. We shall have the right to use the patterns, models, templates and documents to achieve fulfilment of the agreement in the event of delayed delivery by the supplier, to procure additional equipment, for purposes of repair and maintenance, for subsequent modifications and for the production of spare and replacement parts by us or third parties. If necessary, we will also provide the supplier with information required to ensure fulfilment of the agreement.
- (4) The contractor shall treat the agreement as confidential. He must not name us as a reference for third parties without our prior written approval.
- (5) The contractor shall treat any information disclosed to him in connection with the conclusion and execution of the agreement as confidential, unless such information verifiably is or becomes available in the public domain.

### § 3 Price, Terms of Payment

- (1) The prices shown in the purchase order are fixed. Unless agreed otherwise, they include packaging, labelling, shipping and delivery to the designated destination. If a price is agreed "ex works" or "ex warehouse", we will only bear the lowest available shipping costs. All costs arising up to the transfer to the carrier, including loading costs, shall be borne by the supplier. Pricing arrangements shall have no effect on the place of delivery.
- (2) Each purchase order shall be invoiced separately. The invoice must comply with the rules of the destination country and shall list the products or services clearly and transparently. All delivery documents and invoices must include the order number, item number of the order, article code and place of delivery. If such details are missing, we shall have the right to return the goods and charge the supplier for any additional costs incurred. If goods are returned we shall not be liable to pay for such goods. If an acceptance of services rendered has been agreed, the acceptance protocol must be attached to the invoice. Invoicing is subject to the volumes, content and numbers accepted by us. We reserve the right to accept short or excess deliveries.
- (3) Unless agreed otherwise in writing, we will settle the purchase price at our own discretion net within 90 days after receipt of delivery and invoice, with 3% discount within 14 days or with 2% discount within 30 days.
- (4) If early deliveries are accepted, the invoice shall not become due until the agreed date of delivery.
- (5) Payments shall not be interpreted as acceptance of the invoice or regularity of the delivery.
- (6) The supplier is not entitled to assign his claims against us or have them collected by third parties without or prior written approval.
- (7) We shall have the right to offset any claims the supplier may have against us against any and all claims we or our affiliated companies may have against the supplier. Upon request, we will disclose to the supplier all companies that come under this stipulation.

### § 4 Packaging, Labelling, Shipping

- (1) The supplier packages, labels and ships the goods in compliance with our packaging standards and any packaging standards that may be imposed by the carrier. Our packaging standards are available on request. Upon request, we will assist the supplier with regard to packaging, labelling and shipping, so that the supplier is able to achieve the most economical shipping prices.
- (2) The supplier shall not impose any additional charges for packaging, labelling and shipping, unless we expressly agreed in writing to reimburse the supplier for such costs.
- (3) The supplier shall make sure that all consignments are accompanied by the necessary shipping documents.
- (4) The supplier must observe the customs and/or NAFTA requirements, requirements for origin marking and labelling, the requirements of the destination country with regard to invoicing, documentation and VAT requirements. Unless agreed otherwise in writing, the supplier shall obtain the necessary export licences and permits. If a different procedure was agreed, the supplier shall obtain the information we need to obtain such licences and permits. The supplier will inform us without delay if a consignment is partly or entirely subject to export restrictions according to German or other law.

### § 5 Delivery Date

- (1) The delivery date/time indicated in the purchase order is binding.
- (2) The supplier shall inform us without delay and in writing if circumstances occur or become apparent that make it impossible to meet the agreed delivery date. The written communication shall include details on the cause and duration of the delay and the measures taken by the contractor to keep the delay to a minimum. The aforesaid notwithstanding, the supplier shall be obliged to observe the agreed delivery date.
- (3) Force Majeure, labour disputes, riots, public measures and other events beyond the supplier's influence shall entitle us - notwithstanding our other rights - to withdraw partly or entirely from the agreement, unless the duration of such events is completely insignificant. If a supplier or subcontractor of the supplier delivers with delay or fails to deliver, this shall not constitute an event in the sense of clause 1.
- (4) In the event the supplier is liable for the late delivery, we shall have the right to claim a compensation of 1% of the order value for every full week, however not more than 10% of the total order value. The supplier shall have the right to prove that no damage resulted from the delayed delivery or that the damage was significantly lower than the above lump-sum compensation.
- (5) Further legal claims and the proof of higher damage are reserved.
- (6) Partial deliveries are not admissible unless expressly accepted by us.
- (7) The unreserved acceptance of a delayed delivery of goods or services shall constitute no waiver of our rightful claims for delayed delivery, including compensation claims. Nor shall any acts or omissions after acceptance of the goods or services be interpreted as acceptance that the goods or services were in good order.

### § 6 Quality

- (1) All deliveries of goods and services must be free from material and legal defects and comply with the state of technology and the valid laws, regulations and standards. If those requirements are not met, the deliveries are faulty.
- (2) The supplier shall regularly adapt the quality of his goods delivered to us to the state of technology and point out possibilities for improvement and technological changes. The supplier shall comply with our and our customers' standards for quality control, our and our customers' inspection systems and all related standards and systems.
- (3) The supplier shall set up and maintain a documented suitable quality assurance system according to the state of technology. He shall keep records, particularly on his quality checks, and make them available to us on request.
- (4) The supplier herewith accepts quality standards to evaluate the effectiveness of his quality assurance system by us or on our behalf a third party, including our customers, where appropriate.

### § 7 Liability for Defects

- (1) Material or legal defects of goods and services are subject to the valid laws, always provided that - in the case of supply contracts, work and delivery contracts and contracts for work and labour - we have the right to choose the form of supplementary performance, whereas the supplier has the right to refuse our chosen form of supplementary performance subject to the conditions of section 439 subsection 3 BGB (German Civil Code).
- (2) We shall have the right to set a reasonable period for supplementary performance, unless supplementary performance is unacceptable for us. Unacceptability can be any of the cases stipulated by law and in particular an impending inappropriate delay or uncertain success for devices, plants and equipment that are relevant to safety or necessary for the conduct of operations or business. The mutual agreement on a period for supplementary performance has the same legal effect as a deadline set unilaterally.

- (3) Without prejudice to other legal or contractual claims, we shall have the right to remedy the defects ourselves and to claim advance payment in accordance with section 637 BGB (German Civil Code) if the defect is not remedied after a period for supplementary performance of a sale and purchase or work and delivery contract has elapsed.
- (4) In so far as we are entitled by law or by agreement to withdraw from the agreement on grounds of faulty or non-performance and the faulty or non-performance is limited to a definable part, such withdrawal can be confined to that part while the remainder of the agreement remains intact.
- (5) After exercising our right of withdrawal on grounds of faulty or non-performance and in the event of claims for damages instead of performance, we shall have the right to claim reasonable advance payments due to the expected cost plus a security surcharge of 20 percent, notwithstanding other legal claims. In this case, we shall only be obliged to obtain several offers insofar as this will not or is not likely to result in significant delays or a disruption of our operations, production or conduct of business. Our own work will be charged at current market rates.
- (6) Insofar as we are responsible for the examination of performance and notification of defects in accordance with section 377 subsection 1 HGB (German Commercial Code), we shall do so within two weeks after delivery. If a defect becomes apparent at a later stage, we shall notify the supplier within two weeks after the defect is discovered pursuant to section 377 subsection 3 HGB.
- (7) If a material defect is discovered within six months after the transfer of risks, it will be assumed that the defect already existed when the product was delivered, unless such assumption is irreconcilable with the nature of the product or defect.
- (8) The warranty period is 36 months from the date of delivery, unless agreed otherwise in the contract or unless laws provide for a longer warranty period.
- (9) For parts remedied or repaired in the course of a warranty claim, the warranty period starts anew on the day that the supplier has fully satisfied our claims for supplementary performance.
- (10) If we take back products manufactured and/or sold by us due to a faulty delivery by the supplier or if the purchase price of our products was reduced for that same reason or if other claims (such as damages) were filed against us, we shall have the right to take recourse to the supplier without setting a period of cure that might otherwise be required.
- (11) In the event of a recourse according to section 7 subsection 10, we shall have the right to claim from the supplier reimbursement for the damage incurred and for our expenses, including expenses incurred in dealings with our customers.
- (12) Irrespective of the stipulations of section 7 subsection 8, the limitation period for claims according to sections 10 and 11 above shall not end until three months after we have settled our customers' claims against us at the earliest, however not later than six years after delivery by the supplier.

- (13) In the event of recalls due to faulty delivery, the supplier shall bear all costs and expenses.
- (14) In addition to the stipulations set forth hereinabove, the valid laws and regulations, in particular for the reimbursement of expenses and damage claims, shall apply.

**§ 8 Product Liability, Indemnity**

- (1) In so far as the supplier is liable for product damage, he shall be liable to indemnify us immediately for damage claims from third parties and pay compensation for the damage incurred, always provided that the cause of the damage lies within his control and organisation and he himself is liable externally. Insofar as the cause of the damage lies within the responsibility of the supplier, he shall bear the burden of proof.
- (2) In these cases the supplier shall be liable to bear all costs and expenses, including costs arising from or in connection with a recall initiated by us. Furthermore, the valid laws and regulations shall apply. As far as this is possible and can be duly expected, we shall inform the supplier of the nature and scope of the intended recall and give him the opportunity to make comments.
- (3) The supplier pledges to obtain sufficient product liability insurance cover and submit proof of such cover on our request. Any further damage claims we may have shall remain unaffected.

**§ 9 Intellectual Property Rights**

- (1) The supplier guarantees that his performance and its use by us does not violate intellectual property rights of third parties. The same applies to the procurement of accessories and equipment, repair and maintenance, subsequent modifications and the production of spare and replacement parts by us or third parties.
- (2) Notwithstanding our legal claims, the supplier will indemnify us for all claims by third parties and all damage, expenses and other disadvantages arising for us in this context. In particular, the indemnity obligation includes disadvantages we may suffer due to the necessary modification of machines, plant and IT components or software and delays in our normal course of operations.
- (3) The supplier grants us a worldwide, non-exclusive and irrevocable licence for the production, repair and sale of the products subject to the agreement. The licence fee is included in the purchase price for the products delivered under the agreement. The licence includes the right to grant sub-licences.

- (4) The supplier shall transfer to us the right to all inventions and mental property rights made by him and/or his accessories in the course of our contractual relationship and ensure that he can transfer to us the right to inventions of his accessories according to the sub-clause above.

**§ 10 Reservation of Ownership, Provision of Material, Execution Documents, Tools**

- (1) Insofar as we provide components to the supplier, we shall reserve the right of ownership of such components. The supplier processes or modifies the components on our behalf. If the components are processed with other products from third parties, we shall obtain co-ownership in the new product equivalent to the value of our components in relation to the other processed components at the time of processing.
- (2) If the material provided by us is inseparably mixed with products belonging to third parties, we shall obtain ownership in the new product equivalent to the value of our material in relation to the other processed materials at the time of mixing. If the materials are mixed in such a way that the product of the supplier is regarded as the main product, it shall be agreed that the supplier transfers co-ownership to us and keeps the sole or co-ownership on our behalf.
- (3) Documents (e.g. drawings, calculations, sketches), templates (e.g. models, patterns, apparatuses), tools and other production means provided to the supplier remain in our ownership. The supplier is obliged to use the objects exclusively for the production of the goods ordered by us. The objects must not be made available or surrendered to third parties nor disposed of by the supplier. The supplier shall carefully store, service and repair the objects at his own cost for the duration of our order. Partial novelties shall be implemented by the supplier at his own cost. Moreover, the supplier shall at his own cost insure our objects against fire, water and theft. The supplier shall immediately notify us of any incidents. If he fails to do so, we shall have the right to claim damages.
- (4) We reserve all rights to drawings, products etc. made according to our specifications and the methods developed by us.
- (5) For the period of 15 years after the end of serial production, the contractor shall be obliged to supply the principal with service and replacement parts at reasonable prices in the volumes and at the times requested by the principal.

**§ 11 Confidentiality, Prohibition of Advertising**

- (1) The supplier is obliged to treat all (other than publicly known) commercial and technical information that come to his knowledge as part of our business relationship as business secrets. Drawings, models, patterns, tools and other documents, production means and information must be kept strictly confidential and must not be disclosed to third parties without our express approval. The secrecy obligation shall remain in full force after expiry of this agreement. It shall expire when and insofar as the production know-how contained in the provided documents and information has become available in the public domain.
- (2) It is not permissible to use our enquiries, purchase orders or other documents for purposes of advertising. Moreover, our business relationship as such must not be advertised without our approval.
- (3) The supplier shall inform us in writing about all third parties he subcontracts as part of our order, indicating the scope of his order to the subcontractors. The supplier shall ensure that the third parties are subject to the same conditions as the supplier as part of the order.

**§ 12 Offset and Retention by the Supplier**

- (1) The supplier shall offset claims only against undisputed or legally established claims.
- (2) He shall only have retention rights insofar as they are based on the same contractual relationship.

**§ 13 Final Provisions, Partial Invalidity, Place of Jurisdiction, Applicable Law**

- (1) If an application for insolvency or a similar procedure is made against the suppliers' assets or there are sufficient indications that the prerequisites for requesting such a procedure exist, we shall have the right to terminate the agreement with immediate effect and without any damage claims by the supplier.
- (2) All data arising out of or in connection with our business relationships are stored electronically by and transmitted between the companies of Schmitter Hydraulik GmbH. The supplier agrees to this procedure.
- (3) If one or several stipulations are or become void, the remainder of this agreement shall remain in full force.
- (4) The exclusive place of jurisdiction for all disputes between the contracting parties is the court in Würzburg, Germany, which is solely responsible for all legal matters concerning Schmitter Hydraulik GmbH, Arnstein. Nevertheless, we shall have the right to sue the supplier at his own place of jurisdiction.
- (5) Unless otherwise agreed in writing, the place of fulfilment for the delivery of all products and services is the destination indicated in our order form under "Versandanschrift" (delivery address), if no other destination has been given. The place of fulfilment for payments is the location of our registered offices.
- (6) Standard trade terms shall be interpreted in accordance with the Incoterms in the version valid at the time when the contract is signed.
- (7) Any legal relations in connection with this agreement are governed exclusively by the laws of the Federal Republic of Germany for legal relations between domestic parties.