

General Terms and Conditions of Purchase of Schwartauer Werke GmbH & Co. KGaA

(last revised March 2017)

Section 1

General Provisions – Applicability

(1) These General Terms and Conditions of Purchase (hereinafter "General Terms and Conditions") shall have exclusive applicability; we are not bound by any terms or conditions of Supplier different from or conflicting with our General Terms and Conditions unless we have expressly agreed to such terms and conditions in writing. Our General Terms and Conditions shall apply even if we accept delivery from Supplier without reservation knowing that terms and conditions of Supplier differ from or conflict with our General Terms and Conditions. Our General Terms and Conditions shall also apply to any follow-up orders, whether or not our General Terms and Conditions are expressly referenced therein; in such cases we will promptly notify the seller of any changes to our General Terms and Conditions.

(2) Our General Terms and Conditions apply only if Supplier is a commercial enterprise within the meaning of § 14 para.1 of the German Civil Code (*BGB*).

Section 2

Conclusion of Contract – Subcontractors – Data Protection

(1) A purchase contract is concluded as soon as Supplier has returned to us by regular mail or email, duly signed and dated, the order confirmation sent by us, or as soon as our order has been accepted by means other than return of the order confirmation. Our orders (offers) are valid for 14 days.

(2) Supplier hereby acknowledges and agrees that we may store personal data related to the contract in accordance with § 28 of the Federal Data Protection Act (*BDSG*) for data processing purposes and make such data available to third parties (e.g., insurance companies) to the extent necessary for performance of the contract.

Section 3

Prices – Payment Terms

(1) Unless otherwise agreed in writing, all prices are fixed prices excluding value-added tax (VAT) and including packaging, any customs fees and free delivery to the destinations specified by us. The return of packaging shall require a separate agreement.

(2) Invoices can be processed by us only if they include - as instructed in our order - the order number specified therein; Supplier is liable for all consequences resulting from any non-compliance with this obligation, unless Supplier shows that Supplier is not responsible for such consequences.

(3) Unless otherwise agreed in writing, we will pay the purchase price within 14 days from delivery and receipt of the invoice subject to a 3% discount, or within 30 days from delivery and receipt of the invoice without any discount.

(4) We have a right to offset counterclaims as well as a right to refuse performance based upon counterclaims in accordance with applicable law.

(5) We reserve the right to have payments processed by central settlement of a bank / service company. The contractual terms of the agreement for central settlement with *del credere* services exclusively apply to this.

Section 4

Delivery – Delivery Period – Scope of Delivery – Liquidated Damages – Procurement Risk – Risk of Loss

(1) The delivery period specified in the order is binding.

(2) Supplier shall provide us with prompt written notice if any circumstances occur or become apparent to Supplier indicating that Supplier will be unable to make delivery within the agreed delivery period.

(3) If Supplier fails to render performance or fails to render performance within the agreed delivery period or is late with delivery, we shall have the right after expiration of a reasonable grace period to seek expectation damages and to rescind the contract. If we seek expectation damages, Supplier shall pay liquidated damages in the amount of 30% of the purchase price, unless we prove higher damages or Supplier proves of lower damages. We shall have no right to recover expectation damages, if Supplier shows that Supplier is not responsible for the breach.

(4) Unless otherwise agreed by the parties, Supplier shall bear the procurement risk associated with Supplier's delivery obligations.

(5) Goods shall be shipped to the destination specified in the order at the risk of Supplier. The specified destination is also the place of performance (obligation to deliver goods to the place of the buyer). If a contract provides for formal acceptance, the laws governing contracts for the performance of work shall apply, *mutatis mutandis*.

(6) Each shipment shall be accompanied by the appropriate documentation clearly reflecting the order number, order date, our product number, the exact product description, the exact delivery volume, and the number of packages. All written correspondence shall include the order number and order date. For raw materials and primary packaging materials, each container shall include the batch number. The batch number also must be included on the packing slip. If the appropriate documentation is incomplete or missing, we will not be liable for any processing delays.

(7) Unless otherwise agreed, goods shall be shipped on new or like-new 800 mm x 1200 mm Euro pallets. Supplier shall ensure shipments at its own cost.

Section 5

Inspection for Defects – Liability for Defects– Limitation of Claims

(1) If delivered products are defective we may avail ourselves of all legal remedies without limitation. We hereby expressly reserve the right to seek damages, including, without limitation, expectation damages.

(2) Any products required to be labeled with a minimum shelf life or expiration date shall be delivered by Supplier in due time so that we have a reasonable time period to sell the products before they expire. If a product, order or order confirmation includes no special storage requirements, we shall as a result of improper storage forfeit any claims for product defects only in the event of gross negligence or willful actions or omissions.

(3) Our duty to inspect products upon arrival and to provide notice of any defects shall be governed by applicable law (§ 377 and § 381 of the German Commercial Code (*HGB*), subject to the following proviso: Our duty of inspection shall be limited to defects that are clearly visible at the time we inspect the exterior condition of shipments upon arrival, including the shipping papers, or perform random checks during our quality control (e.g., shipping damage, delivery of wrong products, delivery of insufficient number of products). If a contract provides for formal acceptance, we shall have no duty to inspect products upon arrival. In all other cases our duty to inspect products upon arrival shall depend on the extent to which inspection is practicable in consideration of the circumstances of each case and in the ordinary course of business. Our obligation to provide notice of any defects discovered at a later date shall remain unaffected thereby. In all cases notice of defect by us shall be deemed prompt and timely, provided that it is received by the seller within five business days. If larger quantities of identical goods are shipped and/or if inspection of the goods requires destruction of the original packaging, our duty of inspection under § 377 of the German Commercial Code (*HGB*) shall be deemed fulfilled by our inspection of random samples, provided that the random samples are representative of the condition and quality of the shipment as a whole.

(4) In cases of imminent danger or special urgency we shall have the right to remedy defects ourselves at the cost of Supplier.

(5) The limitation period for any claims shall be 24 months from the transfer of risk.

Section 6

Product Liability – Indemnity – Liability Insurance Coverage

(1) In the event that Supplier is responsible for a defect of a product, Supplier shall hold harmless and indemnify us upon first demand from and against any and all claims brought by third parties to the extent that the cause of the defect is within the control of Supplier and Supplier is personally liable to third parties.

(2) As part of Supplier's liability for damages within the meaning of paragraph 1 in this section 6 Supplier shall also reimburse us for any expenses in accordance with §§ 683 and 670 of the German Civil Code (*BGB*) or §§ 830, 840, and 426 of the German Civil Code (*BGB*), to the extent that such expenses are incurred as a result of or in connection with any product recall by us. We will inform Supplier of the nature and scope of any

product recall – to the extent possible and not unduly burdensome – and provide Supplier with an opportunity to respond. Any other legal rights or claims shall remain unaffected thereby.

(3) Supplier shall maintain in effect a product liability insurance policy with a liability limit of €10 million, in the aggregate, for personal injuries/property damages; any claims for additional damages we may have shall remain unaffected thereby.

Section 7

Confidentiality – Retention of Title – Third-Party Rights

(1) Supplier and its employees, agents and representatives shall keep our orders confidential. No documents made available by us to Supplier shall be made accessible to any third parties except with our express consent. In particular, Supplier is prohibited to use orders or our name for advertising purposes except with our express consent.

(2) No information, documentation, materials, tools, lithos, etc., disclosed or made available to Supplier may be used by Supplier for any purposes other than performance of the contract or may be made accessible or provided to any third parties. Such items shall remain our property at all times. The parties hereby agree that in the event that such documentation or items are procured by Supplier at our costs as specifically agreed by the parties, title to such documentation or items shall immediately transfer to us. Supplier shall safekeep such documents or items for us in the exercise of reasonable business care. Upon demand such documents or items, including any copies thereof, shall be returned to us. If an order is not filled, Supplier shall return such documents or items without demand.

(3) Except with our express consent, no rights or claims except for rights or claims arising from the contract between us and Supplier shall be transferred or pledged to any third parties. Any retention of title, other than a standard retention of title in favor of Supplier and advance assignment of the claim for payment of the purchase price as part of an extended retention of title in accordance with industry standards, is hereby excluded.

(4) Supplier warrants that products delivered by Supplier shall not infringe the rights of any third parties within the Federal Republic of Germany.

(5) If we are held liable for any infringements of third-party rights, Supplier shall hold harmless and indemnify us upon first written demand from and against such claims; we shall have no right to enter into any agreements with the third-party claimant, including, without limitation, any settlement agreement, except with the consent of Supplier.

(6) Supplier's indemnity obligation shall extend to all necessary expenses incurred by us as a result of or in connection with any third-party claims.

Section 8

Environmental Protection – Compliance – Safety

(1) Supplier shall comply with all applicable provisions of German and European law (including, without limitation, environmental protection, occupational safety, safety inspection, hazard materials provisions, etc.). We have the right to verify compliance with these provisions by conducting audits at Supplier.

(2) Supplier shall ensure that production and shipment of goods minimize adverse effects on the environment, also in terms of later use and disposal (recycling).

(3) Supplier shall comply with all applicable laws concerning the treatment of employees, and in operating its business shall strive to minimize adverse effects on humans. For this purpose Supplier shall, to the extent possible, comply with the standards of the Global Compact Initiative of the UN. These standards relate, inter alia, to the protection of international human rights, collective bargaining rights, the elimination of forced labor and child labor, non-discrimination for hiring and employment, and prevention of corruption. Additional information about the Global Compact Initiative of the UN is available at www.unglobalcompact.org.

(4) If Supplier commits a cartel infringement according to § 33 para. 1 German Act against Restraints of Competition (GWB), Supplier shall pay liquidated damages in the amount of 15% of the purchase price, unless the absence of damages or damages amounting to a different total are proven. This does also apply if the contract has been terminated or completely fulfilled. All our other contractual and legal claims remain unaffected.

(5) Supplier is solely responsible for compliance with all applicable occupational safety laws when delivering products and services. Shipment shall include, at no additional cost to us, any necessary protective devices and instructions of the manufacturer. Supplier's employees, agents and/or representatives shall be equipped with the necessary safety gear (reflective vests, safety shoes, etc.). Supplier shall comply with all applicable instructions and safety provisions when performing work on our plant property. In the event of the supplier breaching hygiene and safety requirements described prior to commissioning, a lump-sum fee in the amount of 100 € can be claimed for internal handling.

Section 9

Quality and Hygiene Control – Traceability

(1) Supplier shall guarantee conformity with the agreed specifications through a quality control system. This system shall be created and maintained in accordance with the latest state of the art. Supplier shall keep records, including, without limitation, quality control records, and make such records available to us upon demand.

(2) Supplier shall keep and use production records that guarantee the reproducible, traceable production and inspection of delivered products.

(3) Supplier shall permit us and/or our authorized agents to access all facilities related to orders and to inspect all related records during regular business hours. Supplier further consents that we and/or our authorized agents may perform quality audits designed to assess the efficacy of Supplier's quality control system.

(4) In the event that quality problems have occurred in the past, we shall also have the right to perform unannounced quality checks to monitor Supplier's quality control system. Supplier shall pay the costs of the quality audit, if conformity with the specified quality standard by Supplier's product is seriously called into question by a major quality defect.

(5) Supplier shall be under no obligation to disclose any trade secrets in connection with our exercise of rights under paragraphs 1 through 4 in this section 9.

Section 10

Severability – Venue – Choice of Law

(1) If any provisions of these General Terms and Conditions are invalid, the validity of the remaining provisions shall remain unaffected thereby. In such case the parties shall replace the invalid provision with such valid provision as most closely reflects the economic intent and purpose of the original provision.

(2) Any disputes arising between the parties shall be decided by a court of competent jurisdiction at the place of our registered office, provided however that we shall also have the right to file suit against Supplier in any court of competent jurisdiction at the place of Supplier's residence.

(3) All contracts between the parties shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.