

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

(last revised October 2015)

1. Applicability

- 1.1 These Technical Terms and Conditions of Purchase (hereinafter "Technical Terms and Conditions") shall have exclusive applicability; we are not bound by any terms or conditions of Supplier different from or conflicting with our Technical Terms and Conditions unless we have expressly agreed to such terms and conditions in writing. Our Technical 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 Technical Terms and Conditions. Our Technical Terms and Conditions shall also apply to any follow-up orders, whether or not our Technical Terms and Conditions are expressly referenced therein; in such cases we will promptly notify the seller of any changes to our Technical Terms and Conditions.
- 1.2 Our Technical Terms and Conditions apply only if Supplier is a commercial enterprise within the meaning of § 14 para.1 of the German Civil Code (*BGB*).

2. Conclusion of Contract, Parts of Agreement, Subcontractors, Data Protection

- 2.1 A legally binding contract is concluded as soon as we have accepted Supplier's order confirmation in text form. Supplier's order confirmation must expressly disclose any discrepancies between Supplier's confirmation and our order.
- 2.2 These Technical Terms and Conditions shall have exclusive applicability even if a contract is concluded by means other than our acceptance of Supplier's order confirmation, unless agreed otherwise in writing.
- 2.3 Orders are binding only if placed or confirmed in writing. In the event that our orders contain any factual/mathematical errors or ambiguities, Supplier has an obligation to make appropriate inquiries with us.
- 2.4 Depending on the products and/or services ordered, we will provide Supplier with separate, written specifications defining, for example, our requirements for installations, repairs, or the condition of machinery and systems. Such specifications shall then become a necessary part of the order and will be binding for Supplier to the extent that they differ from these Technical Terms and Conditions; in all other respects these Technical Terms and Conditions shall apply.
- 2.5 All offers, drafts and samples shall be made available by Supplier at no cost to us and shall be non-binding for us. Any approval of drafts, drawings, samples or the like submitted to us by Supplier shall not be construed as a waiver of warranty claims.
- 2.6 In the event that Supplier needs any drawings, samples, product specifications or packaging from us to accept or fill an order, Supplier shall request such materials in due time, specifying the exact address of the recipient. Drawings or explanations made available by us shall not release Supplier from the obligation to deliver products and services free of defects.
- 2.7 Supplier shall retain no subcontractors except with our express written consent. Any subcontractors must be identified in writing in the order confirmation. Subcontractors may not subcontract work to any other third parties. Supplier is responsible for due performance of each

contract by its subcontractors or other agents, and Supplier is liable for any damages we may suffer as a result of actions or omissions by such subcontractors or other agents.

- 2.8 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.

3. Prices

- 3.1 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.
- 3.2 In the event that Supplier implements any general price changes between the date the contract is signed and the date the products or service are delivered, the prices agreed upon at the time the contract was signed shall have continued validity.
- 3.3 Unless otherwise agreed in writing, prices for equipment, machinery and systems shall also include the costs of installation, connection and testing, as well as the costs of training our staff.
- 3.4 In the event that the price is based on time and materials, Supplier shall promptly notify us as soon as it becomes foreseeable that Supplier's cost estimate will be exceeded.

4. Scope or Performance

- 4.1 Unless otherwise agreed in writing, all systems to be delivered or to be repaired/serviced shall be delivered to us in operational condition.
- 4.2 All machinery, equipment and systems to be delivered by Supplier shall be started up by professional staff of Supplier and at Supplier's cost.
- 4.3 Supplier shall make available at its own cost all tools and equipment necessary for construction, repair, service, overhaul or any other work, e.g., tools, lifting equipment and tackle, welding equipment, ladders, scaffolding and fire safety equipment, including all equipment required by applicable professional standards.
- 4.4 Supplier shall in due time procure all licenses and other approvals necessary for sale, operation or the performance of work.
- 4.5 For capital goods Supplier shall deliver to us two copies of the following documentation on the delivery date: operating manual · machinery and wiring diagram · spare part lists · service and cleaning schedules · lubrication instructions · list of spare parts recommended to be kept in stock. We shall have the right to refuse payment as long as we have not received a full set of this documentation.

5. Contract Modification

- 5.1 Any modification of the scope of performance or the price is subject to confirmation by us in text form.
- 5.2 We reserve the right to make changes to contract terms, including, without limitation, contract terms related to the design, construction, features or qualities of products or services, after the signing date of the contract – however at the latest when products or services are delivered – to the extent not unduly burdensome for Supplier. In such case we shall have the right and

obligation to make reasonable changes to the agreed prices, in particular to take into account any additional or reduced costs, as well as to the agreed delivery dates.

6. Rights during Production

- 6.1 During production and prior to delivery, we shall have the right to inspect the production process as well as any materials under production by Supplier. Upon demand Supplier shall deliver a status report on the progress of production.
- 6.2 If it is discovered during production that a product is defective or that the production process is defective or is not in conformity with the contract terms, we shall have the right, after expiration of a reasonable grace period and at our option, to rescind the contract in whole or in part, and/or to demand expectation damages, or to insist on specific performance and enforce our rights under Section 8.

7. Shipment

- 7.1 Unless otherwise agreed in writing, products shall be shipped to the place of destination at the risk and cost of Supplier. All costs of packaging and packaging materials shall be paid by Supplier.
- 7.2 Each shipment shall include documentation reflecting our order number and the order date. If requested by us, each shipment shall also include a certificate of origin as well as a production certificate and/or preferential certificate of origin.
- 7.3 Supplier shall be liable for any additional shipping costs and damages to goods resulting from improper shipment or improper or non-conforming packaging. Supplier shall insure each shipment at its own cost.

8. Delivery/Delivery Period, Liquidated Damages, Place of Performance

- 8.1 Delivery dates or periods specified in the order are binding and delivery must be received at the place of destination by or within the stated delivery date or period, unless agreed otherwise in writing. If a contract specifies a delivery period rather than a delivery date, the delivery period shall start on the date of the order.
- 8.2 If delivery is not made on the agreed delivery date or within the agreed delivery period, and provided that the legal requirements satisfied, we shall have the right, after expiration of a grace period (or, if delivery on a date certain is an absolute requirement: without any grace period) to rescind the contract in whole or in part, and/or to demand expectation damages in accordance with Section 8.3, or to demand delivery after the agreed delivery date of delivery period and recover any damages resulting from the delay.
- 8.3 If we demand expectation damages, Supplier shall be liable for liquidated damages in the amount of 30% of the purchase price, unless we prove higher damages or Supplier proves lower damages. Without prejudice to the foregoing provision, Supplier shall immediately notify us even before the delivery date as soon as Supplier has reason to expect that delivery cannot be made by the agreed delivery date or within the agreed delivery period, stating the reasons for and anticipated length of the delay. Our legal rights shall remain unaffected thereby.
- 8.4 If delivery is delayed, we further shall have the right, after expiration of a grace period (or, if delivery on a date certain is an absolute requirement: without any grace period) to demand that Supplier ship and deliver those parts of the work that have been completed, in particular to allow us to complete the work ourselves or have the work completed by third parties.

- 8.5 If we accept late delivery, this shall not be construed as a waiver of our claims to recover any damages resulting from the delay.
- 8.6 The place of performance shall be Bad Schwartau, unless otherwise agreed in a particular case.

9. Acceptance, Notice of Defect

- 9.1 If acceptance is required, acceptance shall be made at the agreed place of performance after completion of work or, if machinery, equipment or systems, or any other parts delivered, after delivery and, if applicable, installation and startup of the same.
- 9.2 The acceptance of work and delivered machinery, equipment and systems shall be documented in a protocol to be signed by both parties.
- 9.3 The risk of loss shall transfer to us at the time of acceptance.
- 9.4 If no acceptance is necessary and we are subject to a commercial duty to inspect completed work and delivered products and to provide notice of any defect, applicable law (§§ 377 and 381 of the German Commercial Code (*HGB*)) shall apply subject to the following proviso: Our duty to inspect completed work and delivered products shall be limited to defects that are readily apparent when we inspect the work or products on the outside, including the shipping papers, upon arrival or during our random quality control checks (e.g., damage from transport, delivery of wrong products, delivery of insufficient number of products). Except as provided herein, our duty to inspect completed work and delivered products shall depend on what is reasonable and appropriate in the ordinary course of business, taking into consideration the circumstances of each particular case. Notice of defect from us shall be deemed prompt and timely in all cases provided that it is received by Supplier within five business days.

10. Payment

- 10.1 Unless the parties have agreed to different payment terms in writing, payment shall be due without deduction within 30 days from receipt of the invoice.
- 10.2 We shall have the right to offset any counterclaims and to refuse performance based on any counterclaims as provided by applicable law.
- 10.3 Payment by us shall not be construed as acknowledgment that delivery or performance is as agreed or free of defects. In the event of defective performance, we shall have the right, without prejudice to any warranty claims, to hold back payment in a reasonable amount until the contract has been duly performed.
- 10.4 For the purchase of capital goods (including, without limitations, systems and machinery) we shall have no obligation to make any downpayment unless and until Supplier has furnished to us a bank guarantee in the same amount as security for the downpayment.
- 10.5 We reserve the right to transfer responsibility for the settlement of all payment transactions to a central settlement services provider (e.g., a bank), subject to the terms and conditions of the Agreement on Central Settlement of Payment Transactions with Transfer of Non-Payment Risk.

11. Assignment, Retention of Title

Supplier shall not assign or pledge the contract, or any rights or claims arising from the contract, to any third parties except with our express consent. Any retention of title other than Supplier's standard retention of title or advance assignment of the claim for payment of the purchase price

in connection with a standard extended retention of title are hereby excluded. Any different terms of Supplier in bills of lading, invoices or other documents are binding only if confirmed by us in writing. Our acceptance of goods shall not be construed as acknowledgment of any retention of title by Supplier.

12. Warranty, Indemnity

- 12.1 Supplier warrants that all services and all machinery, equipment, systems or other spare parts and accessories delivered by Supplier shall be in conformity with the agreed specifications and descriptions, shall have all agreed qualities, and shall be suitable for their known or reasonably apparent purpose. Supplier warrants in particular that products shall be free of any design defects and work flawlessly, and that the most suitable materials will be used. All machinery, equipment, systems and other parts delivered by Supplier shall be in conformity with the generally accepted state of the art.
- 12.2 Supplier warrants that all delivered products and services shall be in conformity with all laws and regulations applicable in the Federal Republic of Germany, as well as with all other applicable technical standards and DIN standards, and shall infringe no third-party rights. Applicable laws include, without limitation, the provisions of the German Equipment Safety Act (*Gerätesicherheitsgesetz*), VDE standards, emissions control standards, as well as applicable professional standards.
- 12.3 If products or services are defective, we may avail ourselves of the remedies for breach of warranty provided by applicable law. We have no obligation to allow more than one attempt to replace or repair defective products or services.
- 12.4 The warranty period shall be two years from the date the risk of loss transfers; the warranty period for construction work shall be as provided by applicable law, but shall be at least three years from the date of acceptance. In the event of repair or replacement, the warranty period shall be extended by the duration of downtime and shall begin to run anew for the repaired and/or replaced parts on the date of repair or replacement.
- 12.5 Supplier agrees to hold harmless and indemnify us from and against any all claims brought against us by our customers, provided that such claims arise from circumstances within Supplier's control and that Supplier is personally liable for such claims in relation to third parties. As part of Supplier's liability under this provision Supplier shall also indemnify us, in accordance with §§ 683 and 670 of the German Civil Code (*BGB*) or §§ 830, 840 and 426 of the German Civil Code (*BGB*), against any expenses arising from or in connection with any product recalls made by us. We will notify Supplier of the nature and scope of any such recalls to the extent possible and not unduly burdensome for us, and afford Supplier an opportunity to respond.
- 12.6 Supplier shall notify us of any restrictions on the use of delivered goods.

13. Environmental Protection, Compliance, Safety

- 13.1 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.
- 13.2 Supplier further shall comply with all other applicable laws and regulations (including, without limitation, environmental protection, occupational safety, hazard materials provisions [German Regulations on Hazardous Materials], etc.). Supplier is personally responsible for gathering information about such laws and regulations as amended from time to time. We have the right to

verify compliance with such laws and regulations by conducting audits at Supplier. 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.

- 13.3 Supplier shall ensure that production and shipment of goods minimize adverse effects on the environment, also in terms of later use and disposal (recycling).
- 13.4 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.

14. Liability of Customer

- 14.1 We are not liable for any damages, unless (a) liability attaches by operation of law, including, without limitation, liability for harm to life, limb or health, (b) we have wrongfully breached a material contract term thereby jeopardizing the purpose of the contract (material breach of contract), and/or (c) the damages are caused by grossly negligent or willful actions or omissions. In all other cases any liability on our part, whatever the legal basis, is hereby excluded. In any event our liability shall be limited to those damages which, based on circumstances and facts which we knew or should have known, we reasonably could foresee or should have foreseen at the time the contract was signed. This limitation of liability shall not apply if it is invalid under applicable law, in particular in cases involving willful actions or omissions or harm to life, limb or health.
- 14.2 The foregoing provisions shall also apply to any personal liability of our legal representatives or other employees or agents.

15. Confidentiality, Intellectual Property Rights

- 15.1 Supplier and its employees and representatives shall keep our orders confidential. All information, documentation, drawings, draft, samples, materials, tools and other items disclosed or made available to Supplier for production of the product or delivery of the service shall not be used by Supplier for any other purposes and shall not be disclosed to any third parties. They shall at all times remain our property. The parties agree that if such documents or items are procured by Supplier at our cost pursuant to separate agreements, they shall immediately become our property. Supplier shall maintain custody of such documents and items for us in the exercise of reasonable business care. Upon demand such documents and items, including all copies thereof, shall be returned to us. If the contract is not performed, Supplier shall turn such documents and items over to us without demand.
- 15.2 Supplier warrants that in connection with products or services delivered by Supplier, no rights of third parties will be infringed in the Federal Republic of Germany.
- 15.3 Supplier agrees that Supplier shall hold harmless and indemnify us upon first written demand from and against any all claims brought by third parties in connection with any products or services delivered by Supplier; we shall have no right to enter into any agreements with such third parties, including, without limitation, any settlement agreements, except with the consent of Supplier.
- 15.4 Supplier's indemnity obligation shall include all necessary expenses which we may incur as a result of or in connection with any such third-party claims.

- 15.5 In the event of any infringement of third-party rights we shall have the right to cancel all related orders, return all related products that have not yet been sold, and recover damages from Supplier.

16. Severability, Venue and Jurisdiction, Choice of Law

- 16.1 If any provisions of these Technical 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.
- 16.2 If Supplier is a qualified merchant (*Kaufmann*), 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.
- 16.3 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.
- 16.4 In case of differences between the German and English versions of our Technical Terms and Conditions or in other cases of doubt, the German version applies.