

TERMS AND CONDITIONS OF PURCHASE
OF STIEBEL GETRIEBEBAU GMBH & CO. KG

(applicable in business transactions with companies, legal persons under public law and special public funds)

1. General

- 1.1 Our terms and conditions of purchase shall apply exclusively; we do not accept any general terms and conditions of the Supplier or which contradict or deviate from our terms and conditions of purchase unless we have expressly agreed to their validity. Our terms and conditions of purchase shall also apply even if we accept or pay for deliveries of products and the provision of services of the Supplier (hereinafter referred to as contractual goods) in the knowledge that the Supplier's general terms and conditions contradict or deviate from our terms and conditions of purchase.
- 1.2 Our terms and conditions of purchase shall also apply to all future business transactions with the Supplier.

2. Conclusion of and amendments to contracts

- 2.1 Orders, contracts and delivery call-offs as well as their amendments and supplements shall be made in writing. Orders and delivery call-offs may also be made by remote data transmission or telefax.
- 2.2 Oral agreements after the conclusion of a contract shall require our written confirmation in order to become effective. Article 2.1, sentence 2, shall apply mutatis mutandis.
- 2.3 Oral agreements after the conclusion of a contract, in particular subsequent amendments and supplements to our orders, agreements made and our terms and conditions of purchase - including this clause on the written form - as well as collateral agreements of any kind shall also require our written confirmation to become effective.
- 2.4 Cost estimates of the Supplier shall be binding and shall not be paid for unless otherwise expressly agreed.
- 2.5 If the Supplier does not accept the order within two weeks from receipt, we shall no longer be bound to the order. Delivery call-offs shall be binding unless the Supplier contradicts within five working days from receipt.

3. Documents for the order

- 3.1 Documents and items, e.g. drawings, parts lists, calculations, models, tools, jigs etc., which we make available or pay for to perform an order, shall remain or become our property. They shall be kept secret and returned to us after completion of the order without any special request to do so. The Supplier shall be liable for loss or damage up to their due return and for misuse.

3.2 Extracts and reproductions of the documents and the items mentioned may only be passed on to subcontractors with our prior consent unless it is imperative to pass them on in order to execute the order. In this case the aforementioned non-disclosure obligation shall be imposed on the subcontractor.

4. Prices and terms of payment

4.1 The agreed prices are fixed prices and apply, unless otherwise agreed in the contract, carriage paid to place of performance, duty paid, packing included. The Incoterms shall also apply.

4.2 Provided that no different agreement has been made in an individual contract, payment shall be made within 14 days from receipt of the invoice and goods with 3% discount, within 30 days without discount.

4.3 Part payments agreed shall become due at the earliest when they are called off.

4.4 If the Supplier is in arrears with its services or we are due claims against the Supplier under the warranty, our payment obligations shall be deemed to be deferred in a reasonable amount.

5. Environmental protection and accident provisions

5.1 The Supplier is obliged, with regard to the goods delivered, to take all precautions necessary to protect the environment and prevent accidents and to allow for all official and statutory requirements. We shall be entitled to demand a certificate from the employers' liability insurance association responsible indicating that all accident prevention regulations have been observed.

5.2 The Supplier is obliged to observe the packing ordinance dated 12 June 1991. We shall only accept transport packing which can be regarded as recyclable materials pursuant to this ordinance. The packing is to be identified with the symbols of the generally recognised recycling systems introduced (e.g. DSD, RESY, RVT). If this obligation is not fulfilled, we shall be entitled to return the packing to the Supplier free of charge to us.

6. Goods delivered

The goods delivered must be suitable for the intended application and comply with the state of the art. If there are standards applicable to the goods delivered and/or their spare parts, these are to be observed in the following order of precedence: accident prevention regulations, DIN standards, VDE standards, others. If, in isolated cases, deviations from a standard or the specified order of precedence are required, the Supplier shall obtain our written consent. The Supplier's warranty obligation shall not be affected by our consent.

7. Delivery dates and delays

- 7.1 Partial deliveries and/or deliveries before the agreed date shall require our prior consent.
- 7.2 Agreed dates and periods shall be binding. Our receipt of the goods shall govern the observance of the delivery date or delivery period.
- 7.3 If the Supplier has undertaken to perform installation or assembly, the Supplier shall bear all necessary ancillary costs, for example, travelling expenses, provision of the tools and allowances, subject to any differing agreements.
- 7.4 If agreed dates are not observed, the statutory provisions shall apply. The Supplier shall notify us without delay if the Supplier foresees difficulties as regards production, the supply of starting material, observance of the delivery date or similar circumstances which could hinder the Supplier in making punctual delivery or impair the agreed quality of the delivery.
- 7.5 If the delivery time is culpably exceeded or performance is deficient, the Supplier shall pay for each week commenced of the delivery time exceeded liquidated damages of 1% of the net invoice amount, but max 5% of this amount, unless higher liquidated damages have been agreed in individual contracts. Payment of the liquidated damages shall not affect the obligations relating to the contractual performance or compensation for the damage we have incurred.
- 7.6 The unconditional acceptance of the delayed delivery or service shall not constitute a waiver of the claims for damages due to us as a result of the delay in delivery or service, including the claims to the liquidated damages. This shall apply until payment in full of the sum owed by us for the delivery or service in question.
- 7.7 Subject to different evidence, the values we determine during the incoming goods inspection shall govern the quantities, weights and dimensions.
- 7.8 In addition to the right of use to the legally admissible extent (Sections 69a ff of the German Copyright Act [UrhG], we shall have the right to use software which belongs to the scope of the products supplied with the agreed performance features and to the extent required for using the product in accordance with the contract. We may also create a backup without any express agreement.

8. Force majeure

Acts of God, labour disputes, disruptions in operations not due to negligence, civil unrest, official action and other unavoidable events shall entitle us - notwithstanding our other rights - to rescind the contract, in whole or in part, provided such incidents are of not inconsiderable duration and result in a substantial reduction in our needs.

9. Shipment

- 9.1 Our order references and order numbers shall always be repeated in the documents relating to our order (order acknowledgement, delivery note, freight documents, invoices etc.).

- 9.2 Delivery notes and invoices shall be submitted in duplicate.
- 9.3 Any higher costs and expenses which arise as a result of any deviation from the normal shipment procedure or as a result of a deviation from the method of shipment we have demanded (road, rail or similar) shall only be recognised by us if this has been agreed in writing. This shall apply in particular if goods have to be shipped by express as the deadline has been exceeded.
- 9.4 All consignments shall be handled free of freight and ancillary costs. The Supplier shall bear the transport fee. Our respective shipping regulations shall be strictly observed.
- 9.5 Unless otherwise agreed in individual contracts, the Supplier shall bear the labour and material costs for shipment, shipping documents, commercially available packing and transport insurance.
- 9.6 The Supplier shall be liable for the consequences of an incorrect declaration in the bill of lading. Notification of dispatch shall be submitted immediately on shipment of each individual consignment.
- 9.7 If details of the receiving agency, the department responsible, the order reference and order numbers are missing in the shipping documents, all additional costs incurred as a result thereof shall be borne by the Supplier.

10. Warranty

- 10.1 The goods delivered shall be accepted subject to the inspection for the absence of defects, in particular for correctness, completeness and suitability. We shall be entitled to inspect the contractual goods insofar and as soon as this is expedient in the normal course of business. We shall report any defects detected immediately on their discovery. To this extent the Supplier shall waive the objection of a delay in filing a complaint.

If the Supplier is delivering castings, it is herewith agreed that any defects (e.g. blisters or shrink holes) can only be discovered during machining, under certain circumstances not until the final work operation. The machining costs incurred to detect the defect shall be borne by the Supplier.

- 10.2 The statutory provisions on material defects and defects of title shall apply unless otherwise regulated in the following.
- 10.3 We shall have the right to choose the method of subsequent performance of the contract. The Supplier shall have the right to refuse the method of subsequent performance we have selected under the requirements of Section 439 para. 2 of the German Civil Code [BGB].
- 10.4 If the Supplier does not commence rectification of the defect immediately after our request to do so, we shall, in urgent cases, have the right, especially in order to avert imminent risks or prevent greater damage, to perform rectification ourselves or have it performed by a third party at the Supplier's expense.

- 10.5 Claims for material defects shall become statute-barred in two years unless the item has been used for a structure in line with its normal application and this caused its defect. The period of limitation for claims for material defects shall commence on dispatch of the contractual goods (passing of risk).
- 10.6 In the case of defects of title the Supplier shall indemnify us for any existing claims of third parties. A period of limitation of ten years shall apply to defects of title.
- 10.7 For parts of the consignment maintained or repaired by the Supplier within the period of limitation, this period of limitation shall start to run again at the time when the Supplier has satisfied our claims for subsequent performance in full.
- 10.8 If, as a result of the defective delivery of the contractual goods, we incur costs, in particular transport, travelling, labour and material costs or costs for an incoming goods inspection surpassing the usual scope, the Supplier shall bear these costs.
- 10.9 If we take back products which we manufactured and/or sold as a result of a defect in the contractual goods delivered by the Supplier or if, as a result thereof, our purchase price was reduced or if a claim was asserted against us in any other way, we reserve the right of recourse against the Supplier and the setting of a deadline otherwise required shall not be needed for our defect rights.
- 10.10 We shall be entitled to demand from the Supplier the reimbursement of expenses which we had to bear in the relationship with our customers because the latter had a claim against us for compensation for the expenses required for the purpose of subsequent performance, in particular transport, travelling, labour and material costs.
- 10.11 Notwithstanding the provision in Article 10.6, the period of limitation in the cases under Articles 10.5 and 10.9 shall occur at the earliest two months after the time when we have satisfied the claims asserted by our customer against us but at the latest five years after delivery by the Supplier.
- 10.12 If a material defect is detected within six months from the passing of risk, it shall be assumed that the material defect already existed on the passing of risk unless this assumption is irreconcilable with the nature of the goods or the defect.

11. Product liability and recall

In the event that a claim is made against us owing to product liability, the Supplier shall be obliged to indemnify us for such claims provided that and insofar as the damage was caused by a defect in the contractual goods delivered by the Supplier. However, in cases of liability dependent on fault, this shall only apply if the Supplier is to blame. If the Supplier is responsible for the cause of the damage, the Supplier shall bear the burden of proof to this extent.

If the Supplier is liable, it shall reimburse all the costs and expenses we incurred including the costs of any prosecution and recall campaign. Moreover, the statutory provisions shall apply.

12. Performance of work

Persons who perform work on the works premises to perform the contract shall observe the provisions of the plant rules in question. Our liability for accidents which happen to such persons on the works premises shall be excluded. This shall not apply insofar as the accidents are caused by wilful or grossly negligent obligation infringements of our statutory representatives or agents.

13. Items provided free issue

Materials, parts containers and special packaging provided by us are our property. They may only be used for their intended purpose. The processing of substances and the assembly of parts shall take place for us. It is herewith agreed that we shall be co-owners of the products manufactured using our substances and parts, which shall be kept safe for us by the Supplier, in the ratio of the value of the materials provided free issue to the value of the total product.

14. Assignment, set-off and right of retention

14.1 Any assignment of claims against us shall only be permissible if we have granted our written consent thereto. This shall also apply to undisclosed assignments.

14.2 The Supplier shall not be entitled to set off claims asserted against us with payment claims unless the Supplier's payment claims have been ruled to be indisputable or *res judicata*.

14.3 Rights of retention of the Supplier are excluded if they are not based on the same contractual relationship.

15. Place of performance, venue, applicable law, severability clause

15.1 The place of performance for the deliveries and services of the Supplier shall be the headquarters of Stiebel, unless otherwise expressly agreed.

15.2 The venue for any and all disputes which arise indirectly or directly from contractual relationships which are based on these terms and conditions of purchase shall be Waldbröl. We shall be entitled to sue the Supplier, at our discretion, at the court having jurisdiction over its headquarters or its branch as well as at the court of the place of performance.

15.3 German law alone shall apply to contractual relationships to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.4 Should one provision of these terms and conditions and the other agreements reached be or become ineffective, the validity of the other provisions shall remain unaffected thereby. The contracting parties shall be obliged to replace the ineffective provision with an arrangement which comes closest to it as regards the commercial success.