

**SMT Scharf AG - STANDARD TERMS AND CONDITIONS OF PURCHASE**  
(as of March 25, 2019)

**1. Conclusion of Contract**

1.1 The Terms and Conditions of Purchase set out below shall form part of the agreement concluded with us.

1.2 Our Terms and Conditions of Purchase shall apply exclusively. We hereby object to any counter confirmation, counter offer or other reference by the Supplier to its general terms and conditions, any dissenting terms and conditions of the Supplier shall only apply if we have confirmed the same in writing.

1.3 These Terms and Conditions of Purchase shall also govern all future transactions between the parties and shall also apply if we accept delivery despite our knowledge of differing or contrary terms.

1.4 Purchase orders shall only be binding if submitted in writing. This shall also be valid for any other agreements made before or after the conclusion of the contract. Purchase orders placed orally or by telephone require the subsequent written confirmation by us to become legally valid. The same shall apply to oral supplements and amendments to the contract. Any performances rendered or deliveries made without written order will not be accepted. Orders, call-offs as well as their modifications, amendments and additions can - after prior written agreement - also be effected by remote data transmission or via machine-readable data carriers.

1.5 We shall have the right to demand changes to the delivery item even after the contract has been concluded to the extent as they are reasonable to accept by the Supplier. The impacts in connection with this change of contract shall be suitably taken into consideration by both parties, particularly with respect to additional or lower costs incurred.

**2. Adherence to Specifications**

2.1 It is understood and agreed that where the Supplier has manufactured the goods to be supplied to us according to certain specifications with regard to the manufacturing process and the product components (the "Specifications") that we have provided to it for such purpose, the Supplier shall not sell or otherwise transfer like goods to any third party without our prior written authorisation.

2.2 The Supplier agrees to adhere at all times to Specifications and shall not change any parts of it without our prior written approval. We reserve our right to change the Specifications at any time if this shall be required through applicable laws.

2.3 We further reserve the right to extend the Specifications to storage and transport requirements. We shall without delay notify to the Supplier of any such variation.

**3. Prices, Payment, Invoices**

3.1 Prices shall include delivery to our facilities, the respective statutory VAT and any and all costs for packaging, except as otherwise expressly agreed upon.

3.2 The purchase price is due and payable within 14 days from receipt of the proper invoice with a 2 % discount or net within 30 days from receipt of the proper invoice.

3.3 The invoices shall be sent to us in one copy immediately after delivery. All invoices must show number and date of the purchase order as well as references, Supplier number and material code number.

3.4 Payment shall neither include a statement regarding the quality of the shipment nor does it limit our rights. If the shipment is faulty we shall be entitled to withhold the payment proportionately to the value of the shipment until the contract has been duly performed.

**4. Offset, Retainer**

We reserve all rights to offset or retain payment provided by applicable law.

**5. Delivery, Shipment**

5.1 All delivery dates stated in the order or otherwise agreed upon are binding.

5.2 The Supplier shall immediately inform us of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.

5.3 In case of delay or default in delivery we reserve all rights under applicable law.

5.4 A dispatch note must accompany each shipment. For deliveries abroad, the Supplier must observe the regulations of the country of importation relating to packaging. This includes but is not limited to clearance certificates (MSDS = Material Safety Data Sheet) for materials and liquids used (antirust agents) and fumigation certificates for raw woods used.

5.5 We shall only accept the quantities or numbers of items ordered. Higher or lower quantities shall only be allowed after prior agreement with us.

5.6 The obligation of the Supplier to take back packaging is subject to the applicable legal provisions. The goods shall be packed such that transport damage is prevented.

5.7 If the Supplier is in default by exceeding the delivery date we shall be entitled to demand a penalty of 0.1% of the total order value per workday, however, 5% of the order value as a maximum. The right reserved to enforce the contractual penalty can be asserted until the invoice is paid. The penalty payment can be appropriated to a claim for damage due to default. We reserve the right to claim further damages.

5.8 If no delivery date has been agreed the deliveries shall be made on workdays during normal business hours. By signing the delivery note and/or taking delivery of the goods supplied no statement is made as to whether the delivery meets specifications.

5.9 Force majeure shall relieve and discharge the parties to the contract from their obligations of contractual performance for the duration of the disturbance and to the extent of its impact. The parties to the contract shall be committed to make every reasonable effort to immediately provide the necessary information and to adapt their obligations to the changed circumstances in good faith.

5.10 In the event the goods arrive earlier than agreed we shall reserve the right to return the goods at the supplier's cost and risk. In such a case we shall be entitled to make the payment not earlier than at the due date agreed.

5.11 We shall accept partial deliveries only after they have been expressly agreed.

## **6. Reservation of Title**

6.1 The Supplier has to transfer the ownership/title of the goods unconditionally and irrespective of the payment of the purchase price. In any case all kinds of extended or overall reservations of title shall be excluded, so that a potential validly declared reservation of title shall only apply until payment of the purchase price for the respective delivered goods and only for those goods.

6.2 The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided to Supplier by us or produced by Supplier in submitting a bid or estimate or in carrying out an Order for us shall be vested in us, and Supplier agrees to return or deliver such tangible property to us upon request. Supplier hereby expressly assigns to us all copyrights in and to any literary property produced by Supplier for us.

## **7. Indemnification**

The Supplier agrees to full indemnification for our benefit (or any of our affiliate companies) from any liability/claim as a result of the manufacture, delivery and storage of Products. It shall refund to us any payments that we shall have made to satisfy any such justified claims. The duty to indemnification and refund shall not apply if the underlying incident shall have provably been caused through gross negligence or wilful misconduct by us any of our employees, representatives, agents or any affiliate. The Supplier shall immediately notify us of any litigation that shall have been started or of any claims that shall have been raised against it and shall upon our demand make available to us all relevant documents.

## **8. Insurance**

8.1 The Supplier shall maintain adequate, comprehensive liability insurance with a reputable insurance company which shall include product liability coverage for damage, injury and/or death to persons, and for damage and/or injury to property. Such insurance shall cover all affiliates of the Supplier to the extent that these are engaged in any of the services falling under these Terms and Conditions of Purchase.

8.2 The Supplier shall, on an annual basis, provide us with certificates of insurance evidencing such coverage. Each certificate shall indicate the coverage represented thereby.

## **9. Passing of Risk, Shipment**

The risk of loss or damage to the goods passes to us upon delivery at the agreed place of delivery.

## **10. Liability, Warranty**

10.1 The Supplier represents and warrants as follows:

- (i) The goods are free from rights of third parties and delivery of the goods does not violate any rights of third parties.

- (ii) The goods shall comply in all respects with all applicable laws, rules and regulations of the country where the Product is manufactured, stored or through which it is shipped, and the countries where the Product shall be used.
- (iii) The goods shall be manufactured to a high quality and in accordance with best industry practice and the Specifications. The Products are safe, merchantable and fit for their intended purpose and shall comply fully with the Specifications in every respect.
- (iv) The goods are labelled as required by the Specifications and by law (including, but not limited to, the laws of the country of manufacture and intended country or countries of use).

10.2 We reserve all rights and remedies for non-conformity provided by applicable law. We are especially entitled, upon our election, to claim remedy of defects, redelivery of conforming goods, and damages.

10.3 In case of third party claims, the Supplier shall indemnify us, upon first demand, from any claims of third parties.

10.4 In case of imminent danger we are entitled, after giving notice to the Supplier, to remedy the defects at the Supplier's cost.

10.5 We will inspect the goods supplied for any defects immediately after their arrival. Obvious defects will be notified by us within 2 weeks, latent defects will be notified by us as soon as they have been detected. If the notification is sent in due time the deadline is deemed to be met.

10.6 Unless a longer limitation period is provided by law the limitation period for claims based on defects shall be two (2) years from the date the delivery item is handed over to us or the third party specified by us at the place of receipt specified by us. In those cases where an acceptance test is provided for by law or contract the limitation period shall commence with the acceptance.

## **11. NO VARIATIONS OR AMENDMENTS**

11.1 These terms and conditions constitute the entire agreement between us and the Supplier and neither party shall be bound by any express, implied or tacit term, representation, warranty, promise or the like not recorded herein whether it induced the contract between us and the Supplier or not.

11.2 No alteration, cancellation, variation or addition hereto shall be of any force or effect unless reduced to writing and signed by both parties.

11.3 No indulgence, leniency or extension of time shown or granted to the Supplier shall in any way prejudice us or preclude us from exercising any of our rights in the future.

11.4 The invalidity of any provision of these Terms and Conditions of Purchase shall not affect the validity of the other provisions. Invalid provisions shall be deemed as replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

## **12. CONFIDENTIALITY**

12.1 The Supplier undertakes to treat as confidential all business and operational secrets (such as illustrations, drawings, calculations, specifications and other documents) as well as the findings and results originating therefrom at the Supplier (hereinafter: Information), also after the termination of the contractual relationship under this Terms and Conditions of Purchase, to not make such Information accessible to third parties, to only use it for the performance of this order, and to neither directly nor indirectly, neither entirely nor in part, exploit them in any manner with copyright relevance.

12.2. The Supplier shall also impose this obligation upon his employees, legal representatives and vicarious agents.

12.3. These obligations shall not apply to information which had already been publicly accessible prior to disclosure by us or which became publicly accessible after disclosure without any involvement on the part of the Supplier, or which were lawfully disclosed to the Supplier by an independent third party without imposition of a confidentiality obligation.

## **13. FINAL PROVISIONS**

13.1 These Terms and Conditions shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention for the International Sale of Goods is excluded.

13.2 Should individual parts of these Terms and Conditions be or become invalid the validity of the remaining provisions shall not be affected.

13.3 The Supplier shall not be entitled to subcontract the order or any essential parts thereof to any third party without the prior written consent of us.

13.4 The Supplier may not assign any claims arising from transactions with us without our written approval.

13.5 Unless otherwise expressly agreed, the place of performance for the delivery commitment shall be the shipping address or point of use requested by us.

13.6 All disputes arising out of or in connection with the legal relationship between the Supplier and the customer, including these terms and conditions or their validity, shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

13.7 The arbitral tribunal shall be comprised of three members. In rendering their decision, the arbitrators shall consider the intention of the Parties hereto insofar as it can be ascertained from the contractual agreement.

13.8 The seat of the arbitration shall be Frankfurt am Main, Germany. The language of the arbitration shall be English.

13.9 The losing Party shall be responsible for all costs and expenses related to the arbitration, and all costs and expenses of enforcement of any arbitral award.