

# General Terms and Conditions of Purchasing SUSPA GmbH

## 1. Scope of Application

1.1 The following provisions shall apply to Purchase Contracts, contracts for working materials, contracts for work and services and contracts of services as well as similar contracts, provided that the contract itself or our order form does not stipulate differently. Any general terms and conditions, delivery terms or terms of payment of the contractual partner shall be considered invalid to the extent that they conflict with our terms and conditions. If and to the extent to which the contractual partner is not willing to accept these General Terms and Conditions of Purchasing he shall be obliged to object expressly and in writing within a period of ten days, beginning upon dispatch of our order to which these conditions are enclosed. General Terms and Conditions, delivery terms and terms of payment of the contractual partner shall not become part of the contract, even if these are transmitted to us in an order confirmation or in a commercial confirmation letter and the contractual partner has effected the delivery or service without preceding objection by us. In the event that no other expressly agreed understandings exist, the orders placed by us with our General Terms and Conditions of Purchasing as part of the contract shall apply in any case if the contractual partner starts to execute the order without objection against our General Terms and Condition of Purchasing in due time.

1.2 In the event that any provision of these General Terms and Conditions of Purchasing is or becomes legally invalid or is validly amended the validity of the remaining provisions of our General Terms and Conditions of Purchasing shall remain unaffected thereby. Modifications and amendments of the subject matter of a contract, as it has been confirmed by us, shall only be valid if the modification/amendment is also confirmed by us in writing.

## 2. Delivery Period, Default in Delivery

2.1 The agreed upon delivery dates shall be binding. In order to determine whether a delivery date or delivery period has been observed, the receipt of the goods at the receiving station, or the location specified by us or the timeliness of the successful acceptance shall be decisive.

2.2 In the event that our contractual partner notices that an agreed upon deadline can not be kept due to whatever reasons, the contractual partner shall be obliged to communicate this to us without undue delay in writing by giving reasons and the approximate duration of the delay.

2.3 The contractual partner shall indemnify us for any direct or indirect damages caused by delay.

2.4 In the event that an agreed upon delivery date cannot be kept due to circumstances for which our contractual partner is liable, we shall be entitled to claim damages instead of and/or besides specific performance or obtain a replacement from a third party (as the case may be) and/or withdraw from the contract, at our discretion, upon fruitless expiry of a reasonable period of grace.

2.5 The contractual partner can only refer to the lack of necessary materials which were to be delivered by us, if the contractual partner has requested them in writing and did not received them within a reasonable period of time.

2.6 Force majeure and collective actions shall relieve the contractual partner from his obligation to perform the contract for the duration of the disturbance and to the extent of its impact. The contractual partner shall be obliged to give the necessary information without undue delay with reasonable endeavor and to adapt his obligations to the changed circumstances according to the principle of equity and good faith. We shall be relieved from the obligation to accept the ordered delivery/service wholly or in part and shall insofar be entitled to withdraw from the contract if the delivery/service is not of use for us anymore (taking into account economic factors) due to the delay caused by force majeure or collective action (as the case may be).

2.7 If a delivery is effected earlier than agreed upon, we reserve the right to return the goods at the expense of the contractual partner. If in the event of premature delivery the goods are not returned, they shall be stored by us up to the delivery date at the expense and responsibility of the contractual partner. We reserve the right to effect payment not until the agreed upon date of maturity in case of premature delivery.

2.8 Partial deliveries shall only be accepted by us if expressly agreed upon. In the event of agreed upon partial shipments the remaining amount shall be specified.

## 3. Shipping, Passage of Risk

3.1 Delivery and shipping shall be effected to the receiving station as specified by us, or, if no such specification exists, to our corporate seat free of all expenses at the cost and responsibility of the contractual partner.

3.2 In the event that a price calculation ex-works or ex-stock of the contractual partner is agreed upon, the shipment shall be effected at the least possible costs,

unless we expressly demand a specific type of shipment.

3.3 In the above-mentioned cases the risk shall only pass upon our receipt of the goods or the service.

## 4. Maturity

4.1 Irrespective of expressly agreed upon conditions of payment and maturity in writing, the maturity of all claims of the contractual partner against us shall require a revisable invoice as specified by us as well as the complete contractual performance, free of defects, by our contractual partner.

4.2 Unless otherwise agreed upon, periods of discount and payment shall not begin until our receipt of the delivery and service, free of defects, or the acceptance (as the case may be) or the correct invoice, whichever takes place lastly.

## 5. Assignments, Set-off

5.1 Claims of the contractual partner against us shall only be assigned upon our prior written confirmation.

5.2 Any set-off of the contractual partner against claims of us shall be excluded, unless the claim of the contractual partner, with which a set-off is to be effected, is not contested by us or confirmed in a legally binding way.

## 6. Passage of Title

Ownership of the delivered goods shall be obtained by us without restrictions upon payment of the goods. Any additional retention of title, especially, but not limited to the so-called extended retention of title in all of its types shall be excluded.

## 7. Duty to Examine and Notify of Non-conformity

The duty to examine and notify of non-conformity according to section 377 HGB (German Commercial Code) shall be two weeks upon receipt of the goods by us in case of visible defects, and two weeks beginning from detection of the defect, in case of hidden defects.

## 8. Warranties

8.1 We shall be entitled to any statutory claims of warranty, without reduction. We shall especially be entitled to claim remedy of the defect or replacement from our contractual partner at our choice. Thereby the contractual partner shall bear the expenses necessary to remedy the defect or to provide for the replacement. We reserve the right to claim damages besides and/or instead of specific performance.

8.2 The statutory periods of warranty shall apply.

8.3 The contractual partner represents and warrants that any services/deliveries

are in accordance with the current state of technology, the applicable legal provisions and the provisions and directives of public authorities, professional associations (*Berufsgenossenschaften*) and trade associations. The contractual partner represents in particular that any environmental laws and officially imposed conditions and any other provisions with respect to the environment have been complied with in the process of manufacture or procurement of the delivered product or service, as the case may be. If in any particular case deviations from these regulations shall become necessary, our approval shall be obtained without undue delay after determination of the necessity of the deviation. In the event that the contractual partner has concerns with regard to the means of performance or use of the delivered goods as requested by us, he shall notify us in writing without undue delay.

8.4 In any case of a warranty obligation of our contractual partner we shall in any case be entitled, however, not obliged to remedy the defect upon fruitless expiry of a reasonable period of time for the supplementary performance at the expense of our contractual partner, or engage a third party to remedy the defect. Furthermore we shall be entitled, however, not obliged, to obtain replacement for the delivered goods, which have been defective, at the expense of our contractual partner.

8.5 The contractual partner warrants to maintain a reasonable and adequate supply of spare parts. This shall include in any case a supply of spare parts for a period of 15 years after discontinuation of a series at our contractual partner.

## 9. Product Liability and Legal Provisions

9.1 In the event that claims which are based upon the violation of official security provisions or on domestic or foreign product liability provisions or laws are made against us due to the defectiveness of our delivery or service, which can be traced to the delivered goods of the contractual partner, we shall be entitled to claim indemnification from this damages insofar as they have been caused by the product delivered by our contractual partner. This damage shall include any, even indirectly incurred costs. At our request the contractual partner shall indemnify us from any product liability claims, as far as they are based upon deliveries/services of the contractual partner.

9.2 The contractual partner shall label the delivered items so that they can permanently be discerned as products of the contractual partner. The contractual partner shall be obliged to install a state of the art quality management system which is adequate in its extent and manner, and to provide evidence thereof to us. Insofar as we deem appropriate we shall enter into a quality management agreement with the contractual partner.

9.3 The contractual partner shall be obliged to additionally insure himself in a reasonable amount against all risks of product liability including the risk of recalls, and to submit the insurance policy to us for inspection at our request. In addition he shall regularly provide evidence at our request proving the continuation of the insurance by submitting suitable documents.

9.4 Environment, hazardous substances, dangerous goods: with respect to the storage of hazardous substances and the transport of dangerous goods the contractual partner shall be obliged to comply with the laws, regulations and provisions valid at any one time.

9.5 The parties are in agreement that the contractual partner shall be obliged to comply with the regulation for the avoidance and utilization of packaging waste (*Verpackungsverordnung*) in its current version and to procure in particular an orderly return and utilization of the delivered packaging materials at his own expense.

## 10. Consequence of Payment

Any payment by us shall under no condition be deemed an acknowledgement of a contestable or invalid legal act. Likewise payment shall not be deemed an acknowledgement of the invoice or approval of a potentially defective delivery.

## 11. Documents

11.1 Any drawings and technical documentations shall be discussed with us prior to the beginning of manufacturing, workshop or assembly works. The documents approved by us shall form the basis of manufacture and assembly. After performance of his works the contractual partner shall be obliged to submit to us the drawings, calculations and other technical documentations corresponding with the actual construction of the delivered goods in the requested number and design until acceptance, at the latest. The contractual partner shall be obliged to transfer title in them to us, free of charge. The intellectual property thereof shall not be affected thereby.

11.2 By giving our approval to drawings, calculations and other technical documentations the warranty and guarantee obligations of the contractual partner with respect to the delivery shall not be affected thereby. The same shall apply to proposals and recommendations of our part, unless expressly otherwise agreed. Any construction documentations may only be used for the agreed upon purpose and only insofar be made available to third parties. They shall be returned to us upon accomplishment of the order unrequested and free of charge.

11.3 We reserve all rights on the drawings made according to our specifications.

## 12. Data security

The client agrees with the fact that all data raised in the context of the business relation, including personal data, are automatically converted to the purpose of the completion of the order. The client agrees in particular with the fact that data, including personal data, are conveyed to suppliers and inquiry agencies assigned by the contractor to the purpose of the completion of the order.

## 13. Confidentiality

The contractual partner shall be obliged to treat orders and details in connection therewith as trade secrets, unless expressly agreed upon differently in writing. The same shall apply after termination of the business relation.

## 14. Place of Performance; Venue

14.1 Place of performance shall be the seat of the Suspa subsidiary that is stated in the respective order, in the event that such an agreement is missing, Altdorf, Germany.

14.2 Venue shall exclusively be Altdorf, or the competent court for Altdorf, respectively, unless compulsory legal provisions provide to the contrary.

14.3 Any contracts that are concluded with us shall exclusively be governed by German law excluding its conflict of law provisions (IPR) and excluding the unified Convention on the International Sale of Goods (CISG), unless compulsory legal provisions provide to the contrary.

Version: 06/2010

General Terms and Conditions of Purchasing

SUSPA GmbH