

GENERAL TERMS AND CONDITIONS OF PURCHASE (STATUS: 03/21)

HERTWICH

SMS group

1. General

- a) Any terms and conditions of the contractor conflicting with or deviating from our General Terms and Conditions of Purchase shall be entirely non-binding, even if Hertwich has not objected to them in individual cases.

2. Orders and their acceptance

- a) For the conclusion of an effective order contract, a written order by Hertwich as well as a corresponding written order confirmation by the contractor is required. The contractor shall send this order confirmation to Hertwich without undue delay. In any case, this order confirmation shall be deemed to have been issued and the order contract shall be deemed to have been concluded if the contractor does not object to an order within 10 (ten) Hertwich working days from the order ("deemed acceptance").

3. Prices

- a) Agreed prices are fixed prices and are quoted free delivery to the point of use, including packaging and freight charges, plus the applicable value added tax. If prices are agreed "ex works" or "ex warehouse", we shall only cover the lowest freight charges. All costs incurred up to handover to the carrier, including loading and excluding cartage, shall be borne by the contractor. The agreement on the place of fulfilment shall remain unaffected by the type of pricing.
We reserve the right to acknowledge excess deliveries or short deliveries.
- b) Deliveries and services exceeding the scope of performance commissioned in writing require an additional written offer and may only be asserted on the basis of a separate written order by the client.

4. Legal provisions; trade terms

- a) Insofar as these General Terms and Conditions of Purchase do not comprehensively regulate the legal relationship between the parties, legal provisions shall apply.
- b) INCOTERMS in the version valid at the time of conclusion of the contract shall apply with respect to the interpretation of the trade terms.

5. Environmental and accident regulations

With regard to the delivery item, the contractor shall be obliged to take all necessary precautions with a view to environmental protection and accident prevention, and to observe all regulatory and legal requirements.

6. Delivery item

The delivery item must conform to its intended use and incorporate the latest technological advances. If standards exist for the delivery item and/or its components, these shall be observed in the following order of priority:

- a. HE factory standards and manufacturing regulations (SN 200), ISO, IEC, EN, DIN, VDE as well as technical regulations of other regulators.
- b. VBG accident prevention regulations
- c. Law on Technical Work Equipment (Equipment Safety Act)
- d. Machine safety DIN EN 292 and DIN EN 294

In the event that deviations from a standard or the specified order of priority are required in individual cases, the contractor shall be obliged to obtain our written consent. The contractor's warranty obligations shall not be affected by our consent. Basic safety and health requirements must be observed when designing and constructing machines in accordance with the applicable EC Machinery Directives. All requisite documentation, explanations, tests and labeling in accordance with these requirements are also included in the scope of delivery.

7. Delivery dates and delay

- a) The agreed delivery dates are binding.
- b) If the contractor becomes aware that he will not be able to meet a delivery date, he must inform us thereof without delay in order to allow other arrangements to be made thereafter, should this be necessary.
- c) In the event that the contractor incurs a delay in delivery, we shall be entitled, after expiry of a set grace period, to either demand contractual fulfilment and claim damages for late delivery, or to withdraw from the contract and claim damages for non-performance.
- d) Partial deliveries and/or deliveries before the agreed date require our prior consent (shipment release). The early provision of deliveries and/or services shall not give rise to any premature payment claims. In the event that the contractor renders deliveries and/or services prematurely without our consent, we reserve the right to invoice the contractor for the associated costs incurred (warehouse rent etc.).
- e) If the contractor is responsible for exceeding the delivery period or for defective performance, he shall pay a contractual penalty amounting 5% of the respective order value, unless otherwise stipulated in our order letter. Payment of the contractual penalty shall not remove the obligation of contractual performance or the obligation to compensate for any damages still to be incurred.

8. Shipping

- a) Unless otherwise agreed in individual contracts, the contractor shall bear the labour and material costs for loading and the shipping documents as well as for the customary packaging in line with the pricing specified in section 3. The goods are to be correctly packaged for transportation using environmentally friendly and recyclable materials.
- b) The weights of the goods determined by railway officials or on our calibrated scales shall apply for shipment processing. The weights specified must be stipulated in the accompanying documents for all shipments. In the case of on-call deliveries or intermediate storage at our request, proper storage and insurance must be provided.
The invoice, delivery note and shipping notice are to be sent to us in due form.
- c) The contractor shall be liable for the consequences of incorrect bills of lading, tariff regulations and inadequate packaging. The shipping notice must be submitted immediately upon dispatch of each individual consignment. If the designated receiving point, department, order number, subject reference or issue note is missing in the shipping documents, all costs arising from this shall be borne by the contractor.

9. Guarantee

- a) The contractor guarantees that the delivery/service is performed in accordance with the order and is suitable for the intended use; furthermore, he guarantees that the design, functionality as well as the assured properties correspond to state-of-the-art technology at the time the order was placed, that the delivery/service is manufactured in accordance with the applicable regulations, new materials of premium and suitable quality are used, and that the order item is free of defects. If deviations from these regulations are necessary in individual cases, the contractor must obtain our written consent. His obligation of rectification shall not be limited by this consent.
- b) Unless otherwise agreed, the contractor shall be liable for a period of 24 months following acceptance/commissioning of the delivery/service.
- c) Irrespective of whether or not the defects for which the contractor or his subcontractors are responsible could have been detected earlier, the contractor undertakes to remedy these defects at our request within the reasonable period of time specified by us free of charge - including incidental costs - by means of repair or replacement. If we cannot reasonably be expected to rectify such defects, the contractor shall replace the defective performance with flawless goods/services at his own expense.
- d) Without prejudice to our other rights, we shall be entitled, should the contractor not meet his obligation within the specified period or be unable to meet it in a form suitable to us, to remedy defects or damages ourselves or commission third parties to remedy these at the contractor's expense, or to invoke the options provided by law for this purpose - in particular withdrawal, loss of value, or compensation. The obligations of the contractor shall remain unaffected.
- e) In the event of improvement, replacement and/or subsequent delivery, the guarantee period for the respective scope of delivery/service and the associated function shall be 24 months following a successful resumption of operations.

- f) In urgent cases, we may, after consultation with the contractor, rectify the defects ourselves or commission a third party to do so at the contractor's expense.
- g) In the event of a hidden defect, the guarantee period shall not commence until the defect can be objectively identified. In the case of goods that are usually left in their packaging until use, defects that only become visible when the packaging is removed shall be considered hidden defects.
- h) If deviations from these provisions are necessary in individual cases, the contractor must obtain our written consent thereto. His obligation of rectification shall not be limited by this consent.
- i) The contractor undertakes to employ environmentally friendly products and processes for his deliveries/services and also for subcontracting or ancillary services of third parties within the scope of his economic and technical possibilities.
- j) The contractor is liable for the environmental compatibility of the delivered products and packaging materials, and for all consequential damages resulting from the violation of his statutory disposal obligations. At our request, the contractor shall issue a certificate of composition for the delivered goods.

10. Property rights of third parties

The contractor guarantees that the delivery and use of the delivery item does not violate the property rights of third parties, in particular patents, utility models, copyrights and competition rights, and will indemnify and hold us harmless from all claims made by third parties at all times and within a reasonable period of time.

11. Drawings, implementation documents, tools - maintenance

- a) Drawings and other documents, devices, models, tools and other production materials, which are handed over to the contractor, shall remain our property. The ownership of tools and other production materials paid by us shall be transferred to us. The aforementioned items may neither be scrapped nor made available to third parties - e.g. for production purposes - without our written consent. They may not be used for purposes other than those contractually agreed - e.g. delivery to third parties. They shall be carefully stored on our behalf by the contractor at his expense during the contract implementation. All documents must be kept secret from third parties.
- b) The care, maintenance and partial renewal of the aforementioned items are subject to the respective agreements concluded between the contractor and us. We reserve all rights to any drawings and products manufactured according to our specifications, as well as to all processes developed by us.

12. Payment: invoicing

- a) Unless otherwise agreed in individual contracts, we shall be entitled to pay either two weeks after delivery and receipt of the invoice with a 3% early payment discount, or on the 25th day of the month following delivery and receipt of the invoice without an early payment discount.
- b) The last instalment/payment shall only be released after submission of a comprehensive final invoice under the conditions stipulated in the order and after fulfilment of all agreed terms.
- c) Payment shall not constitute an acknowledgement of the correctness of the delivery, documentation and provision of services, and thus not constitute a waiver of the client's claims arising from defects in performance due to liability, guarantee, compensation for damages, etc.

13. Assignment, set-off and right of retention

- a) An assignment of claims against us shall only be permissible if our prior written consent has been given. This shall also apply to undisclosed assignments.
- b) The contractor shall not be entitled to set off alleged claims against our company without our prior consent unless the claim is indisputable or has been recognised by law.
- c) Rights of retention on the part of the contractor shall be excluded unless they derive from the same contractual relationship.

14. Group offsetting clause

Due, undue and future claims may be offset against counterclaims arising from all business transactions of the contractor with our company or other group companies (stake of at least 50%) belonging to the same corporate group as the client.

15. Confidentiality

The contractor is obliged to keep strictly confidential all information made available by us for the execution of the order, irrespective of its type or origin, as well as all commercial and technical documents. They may not be published or duplicated, used for any other purpose than the execution of the order nor made available to third parties without our written consent. Publication of extracts thereof is also prohibited. The contractor shall be liable, without limitation, for any damages incurred by us as a result of non-compliance with this obligation.

16. Limitation period

Claims against us arising from, or in connection with, the order shall lapse after expiry of a two-year period from the date of receipt of the delivery and the invoice.

17. Priority rule

In case of doubt, the German version shall prevail.

18. Subcontracting:

- a) The contractor shall be obliged to inform us in good time of any intended subcontracting of essential delivery and performance components, and to obtain our written approval.
- b) The contractor shall be fully liable for his subcontractors, particularly with regard to the following criteria: quality and environment, technical cross-standardization, subcontractor demands, customs endorsements, customs transit, import and transport, etc.

19. Severability clause:

In the event that individual provisions of these General Terms and Conditions of Purchase are invalid, ineffective, unlawful or unenforceable, this shall not affect the validity of the remaining provisions. In such a case, the invalid, ineffective, unlawful or unenforceable provision shall be replaced by a provision which best approximates to the economic intent of this provision in a legally permissible manner.

20. Place of jurisdiction, applicable law, place of performance

- a) For all disputes arising, directly or indirectly, from the contract concluded with the contractor, the competent court, *ratione loci* and *ratione materiae*, for Braunau am Inn/Austria shall be agreed upon as the exclusive court of jurisdiction (district court in Braunau am Inn or regional court in Ried im Innkreis). However, we shall also be entitled to sue the contractor at any other court of our choice, which may have jurisdiction under national or international law.
- b) All contracts concluded by our company and the supplier are subject to Austrian law, excluding the standards of the Private International Law Act (IPRG) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette 1988/96.
- c) The place of performance for the delivery shall be the point of receipt specified by us.