

Terms and Conditions of Purchase (as of May 2013)

The subject Terms and Conditions are applicable to business dealings with entrepreneurs, legal entities under public law and special funds under public law.

1. General

1.1 Our Terms and Conditions apply exclusively. We hereby object to any opposing or dissenting supplier's General Terms and Conditions unless we have explicitly agreed to these in writing. Our Terms and Conditions shall also apply if we, aware of opposing or dissenting supplier's terms, accept or purchase the supply of goods and the services of the supplier (hereinafter known as contractual object).

1.2 Our Terms and Conditions shall also apply to future supplies and services of the supplier to us until our new Terms and Conditions of Purchase come into effect.

2. Conclusion and alteration of contract

2.1 Orders, conclusions and call-offs, as well as alterations and amendments shall be made in writing. Orders and call-offs can also be placed via data transmission or fax.

2.2 Verbal agreements prior to or upon conclusion of contract require a written confirmation to be valid. The second sentence of clause 2.1 shall remain unaffected.

2.3 Verbal agreements after conclusion of contract, in particular subsequent alterations and amendments of our Terms and Conditions of Purchase including this written-form clause as well as any additional agreement, require a written confirmation to be valid.

2.4 Estimations of cost shall be binding and not reimbursed unless explicitly agreed to otherwise.

2.5 If the supplier does not accept the order within two weeks of placement, we are entitled to withdraw from the order. Call-offs shall be binding if the supplier does not withdraw within five working days of placement.

2.6 The Quality Assurance Guideline for Suppliers (Qualitätssicherungs-Leitlinie für Lieferanten (QSL)) as well as the delivery and packing regulations of Sema Maschinenbau GmbH shall form part of this agreement.

3. Delivery

3.1 Deviations from our conclusions and orders shall require our written consent to be valid.

3.2 In case of delayed delivery, if the delivery date fixed by us is exceeded by 14 days, we are entitled to withdraw from the purchase contract with immediate effect without setting a final deadline and at no expense.

3.3 In case of exceeded delivery date, the supplier shall pay a contractual penalty of 0.5% of the total price per week of part thereof, but no more than 5% of the total price, regardless of fault. If the contract is cancelled due to delay or the supplier is not able to provide services under contract, a contractual penalty of 5% of the total price shall be paid.

3.4 If we are able to prove damage that exceeds the contractual penalty, the damage shall also be paid regardless of fault. The supplier shall also be liable for his sub-suppliers.

3.5 Dates and deadlines fixed by us are binding. The receipt of goods shall be decisive for the adherence to the delivery date or delivery deadline. In case of other agreement than delivery free of charge (DDU or DDP according to Incoterms 2000), the supplier shall provide the goods with due regard to loading and shipping time coordinated with the shipping company.

3.6 If the supplier agreed on installing and assembling, unless agreed otherwise, the supplier shall bear any additional costs e.g. travel costs, tooling costs and per diem.

3.7 The supplier shall immediately notify our purchase department if the supplier has difficulties concerning production, procurement of production material, adherence to the delivery date or similar occurrences which could prevent delivery at the agreed date or delivery at the agreed quality.

3.8 The unconditional acceptance of the delayed delivery or service does not constitute waiver of our claims of compensation due to delayed delivery or service. This applies until the payment for the respective delivery or service is made in full.

3.9 Partial deliveries are impermissible unless we explicitly agreed to or such deliveries are deemed acceptable.

3.10 Subject to any other proof, the determinative values for quantities, weights and measures are values calculated by our goods receipt inspection.

3.11 We may legally use software included in the consignment as well as the accompanying documentation according to § 40d of the Austrian Copyright Act (§ 40d UrhG). In addition, we are entitled to use the software with the agreed performance characteristics and to the extent required for conventional usage of the goods. Furthermore, we shall be entitled to create a backup copy without explicit agreement.

4. Force Majeure

Force Majeure, industrial action, no fault operational disruption, riots, regulatory actions and other unavoidable occurrences entitle us, without prejudice to our other rights, to withdraw fully or partially from the contract if these occurrences are not of irrelevant duration and do not result in a considerable reduction of our demand.

5. Shipping Advice and Invoice

The details of our orders and call-offs are applicable. The invoice including invoice number and other identifiers shall be sent to the given address. The invoice shall not be sent with the consignment.

6. Pricing and risk transfer

Unless stipulated otherwise, prices are to be understood delivery fee of charge duty paid (DDP according to Incoterms 2000) including packing. VAT is not included. The supplier shall bear the risk of damage to or loss of goods until the acceptance of goods by us or our representative at the place agreed for delivery in the contract.

7. Payment

Unless stipulated otherwise, the invoice shall be settled either within 14 days with 3% discount or within 30 days without discount of the date due and receipt of invoice as well as goods or provision of service. The payment shall be made under reserve of invoice verification.

8. Claim for defects and Recourse

8.1 Goods and services shall be accepted under reserve of inspection of faultlessness, in particular correctness, completeness and efficiency. We are entitled to inspect the contractual object if possible in regard to duty business routine. Revealed defects will be notified immediately. In this respect, the supplier waives an objection to delayed notice of defects.

8.2 Legal requirements apply to material defects and defects of title unless subsequently stipulated otherwise.

8.3 In principle, we shall be entitled to choose the type of subsequent performance. The supplier shall not be entitled to refuse the type of subsequent performance chosen by us according to § 932 of the Austrian Civil Code (§ 932 ABGB).

8.4 In case the supplier does not follow our request for the remedy of defects immediately, we are entitled to, in case of urgency and in particular to avert imminent danger or prevent damager, remedy the defects at the expense of the supplier ourselves or to assign a third party to remedy the defects. Claims for material defects will expire after 2 years, unless the object has been unused according to common use for a building and caused its faultiness. The period of limitation for claims for material defects commences with the delivery of the contractual object (risk transfer).



8.5 Concerning defects of title, the supplier shall indemnify us against any existing third party claims. A period of limitation of 10 years applies to defects of title.

8.6 For parts of the delivery which had to be mended or repaired within the period of limitation a new period of limitation commences with the supplier's full agreement to our claims of subsequent performance.

8.7 The supplier shall bear the costs incurred due to faulty delivery of the contractual object, in particular freight, travel, labour, material, personnel costs or costs for an extended goods receipt inspection.

8.8 We shall reserve recourse against the supplier if we had to take back goods manufactured and/or sold by us due to faultiness of the contractual object delivered by the supplier, or if the price of our goods was reduced due to faultiness, or if other claims were raised against us, whereas our rights arising of defects do not require the setting of a deadline as otherwise customary.

8.9 We are entitled to claim expense allowances against the supplier for costs claimed by our customers for expenses arising of subsequent performance, in particular freight, travel, labour, material and personnel costs.

8.10 Irrespective of the provisions in clause 8.5, limitation in cases of clause 8.8 and 8.9 commences after 2 months at the earliest, if we have agreed to the claims of our customers against us, and after 5 years the latest after delivery by the supplier.

8.11 If material defects are revealed within 6 months since risk transfer, it is believed that the defect had already existed at the time of risk transfer, unless this assumption is contradictory with the type of material or the defect.

8.12 We shall be entitled to withdraw from the purchase contract at any time if the supplier's service, the quality of the delivered tools or other ordered goods do not correspond to the conditions agreed to, whereas subsequent works to fulfil the contract do not require the setting of a deadline as otherwise customary. In that case, the supplier shall retransfer paid amounts within 30 days.

8.13. If one of our departments informs the supplier both in the course of enquiry and/or in the course of order that the required goods are used in a machine that uses coolants, the supplier shall ensure that the delivered goods are cooling lubricant and oil resistant. Definition cooling lubricants: in Germany according to DIN 51385 and internationally according to ISO TC 28. Subsequently the clauses 8.5 to 8.12 shall come into effect.

9. Product liability and Product recall

In case our customers raise product liability claims against us, the supplier shall indemnify us against such claims if the damage was caused by a defect of the contractual object delivered by the supplier. This only applies to cases of liability based on fault if it is the supplier's fault.

If the supplier is responsible for the cause of damage, the onus of proof is on him. In those cases the supplier shall bear all costs and expenses including costs of potentially prosecution and product recall. Legal requirements shall apply in other respects.

10. Execution of Work

Individuals who execute work at the company premises in the course of contractual performance shall comply to the respective work regulations. There shall be no liability for accidents of these individuals at the company premises, unless these accidents were caused by deliberate or grossly negligent violation of duty of our legal representatives or vicarious agents.

11. Provision

Provided materials, parts, containers and special packing shall remain our property. They shall only be used as intended. The processing of materials and the assembling of parts are accomplished for us. It is agreed that we are co-proprietor at the rate of value of order to value of final product of the products manufactured with our materials and parts which will be stored by the supplier for us.

12. Documents and Confidentiality

12.1 If not provably publicly accessible, all business and technical information made available by us (including features which can be gathered from rendered items, documents or software, and other skills or knowledge) shall be kept confidential against third parties. At the supplier's company, information shall only be provided to persons who necessarily need to be engaged in our delivery and bound by confidentiality. All information shall remain our exclusive property. Except for deliveries to us, those information shall not be copied or used for commercial purpose without our written consent.

Upon our demand, all our information (if necessary including copies and records) and all provided items on loan shall be returned or destroyed immediately and fully.

We reserve all rights (including copy right and the right for application for industrial property rights such as patents, utility models, mask work right, etc.). If third party information has been made available to us, this legal reservation applies to the third party as well.

12.2 Products manufactured by documents prepared by us, such as drafts, models or suchlike, or by our confidential instructions, or by our tools, or by remade tool shall neither be used by the supplier, nor offered to or delivered to third parties. This correspondingly applies to our print orders.

13. Place of Fulfilment

Place of fulfilment shall be the place where the goods shall be delivered to according to orders, respectively the location of our customer concerning the fulfilment of warranty claims.

14. General Terms

14.1 If one term of these Terms and Conditions of Purchase and other made agreements is or becomes ineffective, the effectiveness of the other terms shall not be affected. The contractual partner shall be under the obligation to substitute the ineffective term for another which comes closes in terms of economic success.

14.2 The court of Gmunden shall have jurisdiction over all disputes arising directly and indirectly from these Terms and Conditions of Purchase. We are entitled to take the supplier to court at our opinion either to the court at the supplier's company domicile or subsidiary, or to the court at the place of fulfilment.

14.3 The laws of Austria shall exclusively apply without giving effect to the principles of conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (Übereinkommens der Vereinten Nationen über Verträge über den internationalen Warenkauf (CISG)).