

## GENERAL PURCHASING CONDITIONS

valid since 1992, July 1<sup>st</sup>, Revision 4, form 2013, January 1<sup>st</sup>

### 1. SCOPE OF APPLICATION

These General Purchasing Conditions ("GPC") of Stahlwerk Thuringen GmbH with legal site in Unterwellenborn shall apply to the purchase of any materials, items, products, components, software and any services ("Goods") offered or provided by suppliers ("Sellers"). They apply to all requests made by the Buyer (hereinafter also named "SWT") or quotations or offers, to any offers made by Sellers and are an integral part of any order placed by Buyer with Sellers.

These GPC`s are accepted explicitly in writing or tacitly by acceptance of the order and thereby become an integral part of the contract. A tacit acceptance of the order are also all acts and omissions like the omission of a protest or the delivery of Goods to SWT. Deviating sales and delivery conditions of ordered Goods or General Conditions of Sales of Seller are not legally effective towards SWT.

### 2. PRICES

Sellers shall not give SWT less favorable prices or conditions for all deliveries than to other buyers if and insofar these Buyers get the same deliveries by Seller.

Any reductions of prices in the broadest sense have to be communicated and passed on to SWT without any request and without undue delay.

All Order prices shall be fixed firm and not subject to revision. They are inclusive of all taxes (VAT excepted), contributions, insurances and all other costs incurred by Sellers in performing the Order up to and including Goods' delivery at the precise final location indicated by the Buyer, of all packing, protecting, lashing and anchoring materials and of all necessary documents, accessories, devices and/or appropriate in view of a complete and functional use and maintenance, and include all payments for the use of any intellectual property rights including those of third parties.

In case deliveries/performances take place beyond the confirmed order, Seller is obliged to agree on a written price agreement with SWT prior to the execution of such delivery/performance. Without such price agreement SWT is entitled to verify the adequacy of the prices in the invoice in its own discretion and to determine the final price according to pricing standards and its reasonableness.

### **3. PAYMENT**

In principle, the payment conditions as agreed amongst the parties apply.

Duly issued invoices shall be paid within 60 days after receipt of the Goods or acceptance or receipt of an invoice.

The invoice has to comprise of a sufficient description and the scope of the Goods. The invoices have to be submitted after delivery in a duplicate form. An enclosure of the invoice to the respective delivery is not permitted and is not deemed to constitute an invoice.

Without the order number of SWT the invoice is not processed. The payment date is then prolonged until an orderly invoice is produced. The invoice has to be appended by appropriate documents. Until submission of the appropriate documents any payment term is suspended.

Partial payments have to be agreed upon in advance specially in writing.

In case of payment difficulties of Seller or insolvency or composition proceedings are applied for, SWT is entitled to withdraw from the contract or to request additional securities.

### **4. LEGALLY BINDING ORDER**

Any orders are only binding for SWT if they are placed in writing or confirmed in writing. Changes by Seller are prohibited and towards SWT legally ineffective.

### **5. SAFETY, SUSTAINABLE DEVELOPMENT, CRIMES**

SWT through the application of the principles of sustainable development, is strongly committed to the protection and improvement of safety, health, social dialogue and the environment. Safety in the workplace, in particular, is a priority for SWT. Sellers shall provide Buyers with Goods and/or any necessary equipment, which fully satisfy the safety, health, social dialogue and environmental rules applicable to each delivery (such as laws and regulations, Buyer's safety rules, etc.).

Seller shall inform Buyer of any pertinent information in the areas of security, safety or the environment that relates to the Goods and/or their processing, handling or use. To this end, Sellers will seek information from Buyers with regard to all special features (configuration, activities, transportation, traffic and circulation...) of the specified place of delivery. Such information provided to Sellers shall in no way limit Seller's liability. Should Seller commit a violation relating to safety, health or environmental

obligations, Buyer will be entitled to cancel any Order, with Sellers bearing all expense and liability arising therefrom.

Seller shall therefore accept any liability with respect to any adverse effect arising from his action or inaction in respect of quality, safety, security and the environment and do so both with respect to Buyer or any third party, Sellers acknowledging his full liability in event of the exercise of Buyer's right to cancel the concerned Order.

Seller shall ensure that all delivered materials and applications are in conformity with the REACH Regulation on the Registration, Evaluation, Authorization and Restriction on Chemicals (EC Nr. 1907/2006).

Seller is obligated not to pursue any actions which lead to punishment due to a crime against property, acceptance of benefits by a public official or bribery. In case of any violation thereto, SWT is entitled to withdraw from orders.

## **6. DELIVERIES**

The delivery dates as prescribed by SWT or given in the order confirmation are binding. In case the binding delivery dates are surpassed, Seller is in default without any demand note. SWT is thereupon entitled irrespective if there is any fault of Seller or not to refuse acceptance totally or in part of the Goods without setting of a further date for performance and to withdraw from the contract or to demand damages because of non-performance. Such obligation to pay damages comprises also of consequential damages.

Orders which can not be delivered immediately by Seller have to be confirmed by Seller in writing immediately without any change of orders by giving a binding delivery date which requires approval of SWT. Without such a binding delivery date there shall be no contract between the parties.

Partial deliveries are prohibited unless these are not explicitly and in regards to its scope permitted by SWT. In case of partial performance or partial delivery, SWT is entitled to refuse the entire Goods or to refuse the part which has not been delivered upon return of the partial delivery.

Seller is obligated to report obstacles of deliveries as soon as possible in order to enable SWT to set aside such obstacles without jeopardizing the binding delivery date.

In case of a change of the realm of production or the sales situation of SWT, SWT has the right to withdraw from the entire contract without any right of Seller to claim compensation unless SWT acts willful or with gross negligence.

In case of pure negligence of SWT or its servants any liability is limited to the contractually typically foreseeable damage. Unless otherwise agreed, all Goods shall be sold pursuant to the “DDP” or “free SWT” Incoterm (in accordance with the ICC’s most recent edition), unloaded at the final location indicated by SWT. If no more specific place of delivery is specified, delivery can be made only at the discharging bay or such other place where SWT usually takes delivery.

Seller shall inspect Goods for compliance with Order specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging.

Goods shall be packed in a manner that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules, especially in the case of dangerous goods, if any, (ii) Buyer’s instructions, and at a minimum marking shall set out Buyer's Order number, Seller’ identification, item number, place of delivery, item description, weight and quantity, and all markings required for proper delivery and assembly. Upon request of SWT, Seller shall take back all packaging material after delivery.

Packaging materials and methods are to be selected by Seller to minimize cost of usage and to meet the following objectives: protection against damages, safekeeping, recyclability and energy saving.

Packaging is without any costs for SWT unless laid down differently in the order. All fees and costs and costs incurred by SWT due to deviation from the applicable shipping details in the order must be borne by Seller.

Transportation:

Seller is obligated to undertake all measures necessary to perform proper transportation of the Goods. Seller shall organize transportation of the Goods to the place of Delivery in a manner designed to avoid damage to the Goods and to assure unloading without any difficulty at the Buyer’s place of delivery.

The obligation to bear costs for transportation is based on the order, in any event SWT does not pay more than cheapest costs for transportation and routing.

## **7. MODELS, SAMPLES**

For orders based on models or samples, in the case of serial production, production samples shall be submitted before the commencement thereof.

Seller undertakes to only commence serial production when the production sample is approved by SWT and serial production is authorised. For the delivery of tools, these shall be deemed approved when flawless products in serial production are made using such tools.

The prior written consent of SWT is required in the event of any deviation in quality, material, colour, weight, quantities or other materials.

## **8. NOTICE OF DEFECTS**

At the request of SWT, Seller shall establish and/or show evidence of a quality management system (DIN ISO 9000 ff.). SWT may review the effectiveness of this quality management system on-site. Complaints made by SWT shall be promptly remedied provided they are made within one week of receipt of goods at SWT, or in the case of hidden defects, upon discovery of the defect. In case special measures have to be undertaken for an examination of the defects, e.g. a participation of third parties or the creation or analysis of samples, the date for complaints is prolonged to up to four weeks. SWT shall inform the Seller about delays in regards to the examination. In regards to timeliness of the notification it is sufficient in case the notice of defects is raised within this period or without undue delay after such period.

Until complaints are remedied, the payment term pursuant to clause 3 GTC shall be extended. The right to submit complaints also applies for model and sample deliveries. The right to submit complaints concerning the main delivery of the object of the contract is unaffected by the same.

The relevant time period shall commence upon receipt of the Goods or performance at the place of performance, namely Unterwellenborn or the valid location specified by SWT for delivery. The place of performance, shall, in principle, be the SWT company premises in Unterwellenborn, unless otherwise agreed. Periods shall not run during any SWT company holiday.

## **9. WARRANTY, LIABILITY**

Seller warrants that all deliveries/performances conform to the state of the art, the applicable legal provisions and the instructions and guidelines of authorities, professional bodies and trade associations. Seller further warrants that the deliveries/performances are free from the rights of third parties and that it is entitled to unrestricted disposal of the same. Seller accepts responsibility for ensuring that the delivered goods or performance rendered conform to the contractual provisions which govern the sale and use of these ordered goods, whether statutory or official, or similar regulations or business practices.

When delivering technical work equipment, machinery and other equipment, they must conform to the latest respectively applicable version of the Product Safety Act (ProdSG) as well as the EU Machinery Directive (MRL). Spare parts must be supplied by Seller for a minimum period of 7 years.

Seller further accepts responsibility for ensuring that the delivery or performance conforms to the order of SWT.

In the event of failure to execute the order in accordance with the contractual terms, SWT is entitled to reject the entire Goods or performance. Such rejection shall not entitle Seller to claims for compensatory damages against SWT, unless SWT is liable due to gross negligence or wilful intent. In the event of rejection, SWT shall be entitled to termination, price reduction or compensation for non-performance, also in the event of indirect hidden defects subsequently detected. SWT shall select its preferred course of action. The scope of compensation for non-performance shall also include any costs incurred during the process of locating the defect and installation of spare parts as well as costs for expert assessors and transport costs.

SWT shall be entitled to reject goods if the required tests, attestations or documents are not submitted and are sent by means other than specified within the contract, the same shall apply to packaging etc.

Seller warrants that the Goods shall remain in good working order for a period of 2 years, with effect from commissioning. If defect liability claims are exercised, the warranty period shall be suspended until the defect has been remedied by Seller; the warranty period shall then be extended accordingly.

Seller is obliged to remedy all reported defects at its own expense and, where this can not be performed at the premises of SWT, also to retrieve and to transport the Goods at its own expense. If the Seller requests periods for rectification beyond one week, SWT shall be entitled to perform the rectification itself or by a third party at the expense of Seller. If corrective measures by Seller are unsuccessful on more than two occasions, SWT shall be entitled to termination or compensation for non-performance, as previously stated.

The respective start of the warranty period shall be the receipt and acceptance by Seller of the delivered Goods or rendered performance.

Delivery excesses or shortfalls are not, in principle, permitted. However, for deliveries made by weight, a tolerance of +/- 5 % is permitted. Any execution other than agreed is not acceptable and shall render payment claims of Seller null and void. Any fees and/or costs of the SWT arising due to justified complaints must be borne by Seller.

Seller shall be liable for all direct, indirect losses and damages, all collateral damage, all special and consequential damages, including loss of profits, to which Buyer is subject due to delivery delay, defects of Goods or other breaches of duty of Seller.

#### **10. RETENTION OF TITLE**

A retention of title of Seller, regardless of form and contents is only effective if SWT expressly agrees hereto in the respective order in writing. Any agreed retention of title shall expire no later than payment of the invoiced amount for the respective order. All retentions of title, which involve further conditions, e.g. extended and transferred retention of title, shall not be legally binding for SWT.

#### **11. ASSIGNMENT**

The assignment of claims for Seller to third parties against SWT is excluded.

#### **12. DOCUMENTS AND AUXILIARY MATERIAL, TECHNICAL DOCUMENTS**

At the agreed time, but no later than delivery of Goods or final acceptance of performance, Seller must deliver to SWT all technical documents concerning the Goods and performance, particularly operating and maintenance instructions, training material, drawings, technical data sheets, safety data sheets, factory certificates, certificates of conformity and all other supporting documents.

Documents and auxiliary material with which Seller is provided, particularly drawings, must be carefully stored, safeguarded and returned following execution of the order with the delivery of the Goods or the rendering of performance. The same applies for auxiliary materials, where not used for the order.

#### **13. INTELLECTUAL PROPERTY RIGHTS**

Seller guarantees that the Goods ordered by SWT are free from third party rights and at its unrestricted disposal. Seller shall indemnify and hold SWT harmless from all actions or claims, liability, losses, costs, legal fees, expenses and damages due to or arising as a result of any breach of intellectual property rights. If requested by SWT, Seller shall defend itself against all said claims, processes and proceedings at its own expense.

#### **14. CONFIDENTIALITY**

Confidentiality with respect to third parties, particularly including the passing-on of information, models etc. and the exercising of all rights by SWT, including copyright, is an essential obligation incumbent on Seller in the concluded contract. Seller shall be liable to SWT for any breaches thereof.

If a contractual partner becomes aware that confidential information has come into the possession of unauthorised third party or a confidential document has been lost, it shall promptly notify the details to the other contractual partner.

#### **15. FORCE MAJEURE**

Neither SWT nor Seller shall be responsible for the non-performance of contractual obligations, in whole or in part, in the case of force majeure. In such cases, both contractual parties shall discuss the further performance of the contract.

#### **16. INSURANCE**

Seller must verify and maintain all insurance policies required, to fulfil its obligation in terms of liability under the current GTC. Seller agrees to provide SWT with verifiable proof that its insurance coverage meets the requirements of SWT and those of third parties in terms of insurance coverage.

#### **17. PLACE OF JURISDICTION/Applicable Law**

The place of jurisdiction is agreed as the competent court in Gera.

German law shall apply.

The United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is excluded.