

# **General Purchase Conditions**

## **(Date: October 2015) – AEB 10-2015**

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### **1. Scope**

(1) These conditions shall apply to all goods and services to be provided to us (hereinafter: performance).

(2) In relation to the general terms and conditions (GTC) of the supplier only our General Purchase Conditions shall apply; our GPC shall also apply even if the GTC or other contract conditions of the supplier are not expressly objected to by us. Any contract conditions of the supplier conflicting with or deviating from our orders or these GPC shall not be recognised or included in any contractual agreement unless we have expressly agreed to such in each case in writing.

(3) The carrying-out of any order shall constitute an unconditional acceptance of our General Purchase Conditions.

### **2. Offers, Orders and other Declarations**

(1) Any offer shall correspond with our inquiry; variations, concerns, reservations, points requiring clarification or alternative proposals must be clearly identified as such. All offers and alternative proposals shall be non-binding for us and at no charge to us.

(2) Any orders, agreements or other declarations shall be binding only if we issue or confirm such in writing. For the satisfaction of any requirement of writing, a copy of an original signed and retained by us shall be sufficient. Computer-produced orders are not be required to be in writing if such are expressly labelled as being computer produced.

### **3. Prices**

(1) The agreed prices are fixed prices and shall comprise a delivery towards the relevant application site and any packing and freight costs; the applicable turnover tax (*Umsatzsteuer*) shall be added. If any price agreed is “ex works” or “ex warehouse” we shall accept only the lowest freight costs; all costs resulting up to the time of transfer to the carrier, including loading costs but excluding freight charges, shall be borne by the supplier. The form of pricing shall not affect the agreement in relation to the place of performance.

(2) We reserve the right to accept any excess delivery or under delivery.

### **4. Place of Performance**

In relation to any claims for payment as between the parties, the place of performance shall be our respective seat of administration and for all other claims the place of receipt expressed in our printed order form under “delivery address”.

### **5. Packing, Transport**

(1) Part deliveries are not permitted.

(2) The goods are to be packed correctly. In case of hazardous substances the required labelling is to be attached and the respective documentation prepared.

(3) If packing materials remain the property of the supplier, such packing materials shall be taken back by the supplier at its own expense.

(4) Transport risks in each case shall be borne by the supplier.

(5) The supplier shall carefully safeguard our interests during transport. We are not obliged to process any wagonloads before receipt of the delivery documents.

### **6. Commercial Terms**

Any interpretation of commercial terms shall be subject to INCOTERMS in the applicable version valid at the time of the concluding of the contract.

### **7. Proof of Origin, Proof of Turnover Tax, Export Limitations**

(1) Any proof of origin requested by us shall be made available by the supplier without undue delay with all necessary details and duly signed. The same shall apply correspondingly to any turnover tax documentation required for foreign or intra-community deliveries.

(2) The supplier shall inform us without undue delay, if a supply is, in whole or in part, subject to export restrictions under German law or the law of any other jurisdiction.

### **8. Drawings, Documentary Evidence and Other Documentation**

(1) Any documentation (e.g. drawings), devices, models, tools or other production materials or templates made available by us shall remain our property. Such may be used, copied or transmitted to third parties only for the processing of an offer or the carrying-out of an order. Such shall be returned to us without undue delay and at no charge after the completion of the order.

(2) When required in specific cases by law or any statutory instrument the following documentation is to be included with any goods for delivery:

- operation and instruction manuals in the German language;
- security data sheet;

- EU declaration of conformity and CE label or installation declaration

(4) Insofar as such is agreed in any contract, the goods for delivery shall include technical documentation in the German language consisting of instruction manuals, maintenance and technical examination instructions, implementation plans and replacement and spare part lists.

(5) We are entitled to use instruction manuals and technical documentations for the procurement of accessory equipment, for maintenance and servicing, for any subsequent changes or the production of spare and reserve parts by ourselves or a third party company and may make these instruction manuals and technical documentations available for such work. If necessary, the supplier shall provide us with any additional information necessary for the achieving of the contract purpose.

### **9. Obstacles to Performance; Legal Status of Subsuppliers; Special Termination Rights in Case of Financial Collapse**

(1) Any obstacles in the performance of the contract or any concerns in relation to the method of making contractually-intended are to be notified by the supplier in writing without undue delay.

(2) The supplier shall be liable for sub-suppliers to the same extent it is liable for its own supplies. In case of any suspected defect or damage in connection with sub-supplier parts of the contractual performance or subcontracted services, upon request the supplier shall provide us with details concerning the sub-supplier, distributor or contractor undertaking the work as well as all details necessary for making a claim against such.

(3) If, in relation to the assets of the supplier, an application is made for insolvency or comparable proceedings or, if there are adequate indications of the pre-requisites for an application for such insolvency or comparable proceedings existing, such shall constitute sufficient grounds for a special right of termination with immediate effect (*sofortiges außerordentliches Kündigungsrecht*) and to the exclusion of any rights on the part of the supplier to claim compensation.

### **10. Performance and Warranty**

(1) All performance by the supplier must at the time of the transfer of risk correspond with the warranty characteristics of our order and be unconditionally suitable for the customary operational period of use and the purpose set out in the contract or, in the event that such is not set out in the contract, be suitable for the normal purpose for which such goods are used.

(2) Performance must correspond with the recognised rules of technology and the European and German technical standards, or legal or regulatory requirements at the place of performance and, in

particular, health and safety provisions, the requirements of the Product Safety Act (*Produktsicherheitsgesetz*), accident prevention regulations and fire prevention regulations as well as environmental protection requirements.

(3) In case of any defects in the goods or any defects as to title related to the performance of the supplier, the requirements of law shall apply. We are entitled to set a subsequent deadline for compliance unless such subsequent performance (*Nacherfüllung*) is not reasonable for us. Such shall be unreasonable, in addition to the circumstances set out in law, in particular in case of pending unreasonable delay or uncertain prospects of success in relation to any equipment, plant or devices necessary for safety, operational or business purposes. Any mutual agreement on a subsequent period for performance shall have the same legal effect as the setting of a deadline by us.

(4) In case of any defects in the goods, in addition to any rights set out in law and, also in relation to sales contracts (*Kaufverträge*) or works supply contracts (*Werklieferverträge*), after an unsuccessful expiry of a subsequent deadline set by law in accordance with § 637 Civil Code (*BGB*) we shall be entitled to undertake such work ourselves and claim an advance payment.

(5) We shall – to the extent that the non-performance or incorrect contractual performance relates to a limited and definable part of the contract - be free to limit such withdrawal (*Rücktritt*) to only that specific part of the contract affected whilst maintaining the other parts the contract and so that such other parts of the contract shall be unaffected and shall remain in force. .

(6) Insofar as we are obliged to inspect any performance and claim for any defects under § 377 section 1 Commercial Code (*HGB*), such shall apply for a period of two weeks from the time of delivery. Any claim for a defect which becomes apparent at a later time shall be within the deadline set under § 377 section 3 Commercial Code (*HGB*) provided that such a claim is made within two weeks of its detection.

(7) If within a period of six months after the transfer of risk any defect becomes apparent, it shall be assumed that the object was already defective at the time of the transfer of risk unless such an assumption is not in keeping with the nature of the matter or the defect.

### **11. Proprietary Rights**

(1) The supplier shall be liable for its performance and any use by us in accordance with the intended purpose not infringing third party proprietary rights.

(2) Without limiting our rights at law, the supplier shall indemnify us against all claims of third parties in case of any infringement of third party proprietary rights arising from the intended use of the performance and such indemnity shall cover all damage,

expenses and other detriments or burdens. This shall include in particular any burdens or detriments arising for us in relation to any required changes in the buildings, machines, plant or IT equipment or programs as well as from any delays in the progress of the building, project or operations.

## 12. Invoicing

(1) A separate invoice is to be provided in relation to each order. Such invoices must comply with the requirements of applicable tax laws and domestically in particular with the requirements of the Turnover Tax Act (*Umsatzsteuergesetz*), and such invoices shall be clear, transparent and comprehensible with information as to the performance provided and details of our order number. Insofar as any acceptance procedures for the performance have been agreed, the acceptance record is to be attached.

(2) Only those quantities, contents and item numbers accepted by us shall form the basis of an invoice. In case of any weight deviations we shall accept only the weight determined by our scales operators.

## 13. Payment

(1) We shall pay within 14 days after delivery and receipt of invoice with 3 % discount for prompt payment or until the end of the month following delivery and receipt of invoice without any deduction.

In case of any acceptance of premature deliveries the due date for payment shall be based on the agreed delivery date.

(2) Payments by us shall not constitute a recognition of any billing.

(3) We reserve the right to set-off on the basis of any counterclaim in relation to the main claim of the supplier.

(4) In the event that we are in delay with any payment we shall make such subject to interest to the exclusion of any further rights of claim, such interest being at the rate of 5 percentage points above the basis interest rate in accordance with § 247 Civil Code (*BGB*).

## 14. Security

If we make an advance payment or pre-payment in relation to our order, we shall be entitled at any time to require reasonable security in the form of an indefinite and unconditional guarantee issued by a financial institution with the best credit rating and registered in the European Union, such guarantee being in accordance with German law and with a German place of jurisdiction or we may demand a chattel mortgage (*Sicherungsübereignung*) over the materials and in particular those goods ordered and being processed.

## 15. Assignment, Transfer, Change of Name

(1) Without our express prior written permission the supplier shall not be entitled to assign any claims against us in whole or in part; we shall not refuse such permission except for an important reason (*wichtiger Grund*).

(2) In relation to any assignments based on an extended retention of title, approval shall be deemed to be granted with the requirement that we shall reserve all rights against the assignee to which we would be entitled in relation to the supplier without such an assignment. The supplier is not entitled to grant or assign to a third party any direct debit authorisation in relation to the price to be paid. (3) The supplier shall not transfer its contractual obligations in whole or in part to any third party without our express prior written approval. If such approval is provided the supplier shall remain liable to us as joint debtor.

(4) The supplier shall notify us without undue delay of any transfer of the contract occurring as a result of the operation of law as well as of any changes in its company name.

## 16. Set-off and Retention by Supplier

(1) The supplier is permitted to set-off only those claims which are undisputed or subject to a final legal judgement.

(2) Any rights of retention shall be available to the supplier only insofar as such relate to the same contractual relationship.

## 17. Jurisdiction; Applicable Law

(1) The jurisdiction for both parties shall be the District Court (*Amtsgericht*) or Regional Court (*Landgericht*) at the seat of the customer and, in addition, we shall be entitled to select the general place of jurisdiction of the supplier.

(2) In addition to the provisions of the contract, the law of the Federal Republic of Germany to the exclusion of UN Sales Law shall apply exclusively to the legal relationship with domestic parties.

## 18. Severability; Advertising Prohibition; Data Protection

(1) These provisions shall remain fully effective even in case of any individual parts of the provisions becoming ineffective.

(2) The use of our queries and orders for advertising purposes is not permitted.

(3) Any data arising in connection with the commercial relationship will be stored by companies of the Salzgitter Group in data form and transmitted as between the companies.