

## General Terms and Conditions of Purchasing of SUHNER Deutschland GmbH

### 1. Scope

- 1.1 These Terms and Conditions only apply to companies within the meaning of Section 14 German Civil Code (BGB), legal persons under public law or special funds under public law.
- 1.2 Unless otherwise agreed in writing, the following General Terms and Conditions of Purchasing shall apply exclusively to all - including future - contracts for the delivery of goods and services. The general terms and conditions of the supplier or contractor (hereinafter uniformly referred to as "Supplier") shall only apply insofar as we have agreed to them in writing.

### 2. Purchase orders

- 2.1 Purchase orders and any amendments or additions thereto must be in writing in order to be valid.
- 2.2 The Supplier shall confirm the purchase order/amendment/addition in writing without undue delay. If we do not receive proper confirmation within two weeks of receipt of the purchase order, we will no longer be bound by the said order.

### 3. Safety devices

Where the purchase order relates to machinery, appliances, vehicles and such like, the safety devices required under accident prevention regulations must also be supplied without the need for any special order or notification.

### 4. Delivery and acceptance

- 4.1 Agreed delivery dates and lead times are binding. Compliance therewith shall be determined by receipt of delivery at our works.

Agreed acceptance dates are also binding. The agreed acceptance date is deemed to have been met where a person authorised by us confirms successful delivery, in writing, e.g. by signing off the acceptance report.

- 4.2 In the event of force majeure, industrial disputes, riots and other unforeseeable, unavoidable and serious occurrences, the lead time shall be extended appropriately for the duration of the disruption and to the extent of its effect. The Supplier shall inform us of the beginning and end of the aforementioned impediments, without undue delay. If the aforementioned impediments occur on our side, the same shall apply to our acceptance obligation.
- 4.3 If the Supplier becomes aware that it is unable to meet a delivery date, it must inform us of this, without undue delay, indicating the reasons and the likely new delivery date.
- 4.4 By way of contractual penalty in the event of a default in delivery, we are entitled to demand payment of 1.0% of the agreed price for the whole delivery, for each complete week of delay, up to a total maximum of 5%. This shall be without prejudice to additional statutory rights. The Supplier is free to show that the loss was lower. We reserve the right to claim this contractual penalty up until final payment.

### 5. Price and Payment

- 5.1 Prices are DDP works designated in the purchase order Incoterms ® 2020.
- 5.2 Invoices from the 1st to the 15th of any month shall be paid on the 25th of the same month, invoices from the 16th to the 31st of any month on the 10th of the following month less 3% discount or within 30 days net, in each case after receipt of invoice and delivery of the goods or provision of the services and acceptance, as the case may be.
- 5.3 In the event of a defect, we are entitled to withhold payment proportionately to the value until the defect has been duly rectified.

### 6. Transfer of Risk

- 6.1 Risk shall pass to us DDP works designated in the purchase order Incoterms ® 2020. This also applies if we deploy our own transport personnel.

Insofar as acceptance has been agreed or is prescribed by law, the risk shall pass to us upon successful acceptance.

- 6.2 We are exempt from mandatory freight forwarder's insurance (SLVS).

**7. Liability under Warranty**

- 7.1 The Supplier warrants that, on delivery to us, the delivery items are free of defects in title and material defects and that they comply with the recognised state of the art, relevant laws, health and safety provisions as well as the customary technical and quality assurance standards (e.g. DIN, EN/ISO, VDE, CE marking, ATEX standard). In case of varying interpretations of these standards, the German version shall take precedence.
- 7.2 The Supplier is obliged to carry out an outgoing goods inspection. For custom-made parts, the Supplier shall carry out the initial inspection according to DIN ISO 2859 Part 1; General Test Level II with AQL 0.65. Each delivery shall be accompanied by an inspection report or a certificate indicating that the parts have been inspected, as well as the manner and result of the inspection.
- 7.3 On receipt, we will examine the goods for obvious defects and transport damage visible externally on the packaging and will check the identity and quantity based on the delivery documents. There is no further obligation to examine the goods. We will report any other defects to the Supplier without undue delay following their discovery. In this regard, the Supplier waives its defence of late notification of defects.

This obligation to carry out an incoming goods inspection shall not apply where an acceptance procedure has been agreed or is required by law.

- 7.4 Unless otherwise indicated below, the Supplier's obligations in case of defective delivery are governed by the statutory provisions.
- 7.5 We are entitled to choose either rectification of defects or delivery of defect-free goods, free of charge. In case of urgency, we are entitled, following agreement with the Supplier, to effect rectification of the defects ourselves, have them rectified by a third party or obtain a replacement elsewhere, at the Supplier's expense.

The same applies without the need for an agreement where the Supplier defaults on its obligation to effect subsequent performance.

- 7.6 We are entitled to claim the reimbursement of expenses pursuant to Section 445a German Civil Code (BGB), even if the Supplier has only delivered a part, or only raw materials, and not the complete newly manufactured item.
- 7.7 Unless the law provides for a longer time limit, the limitation period for claims based on defective delivery shall be 36 months from transfer of risk or - where agreed or provided by statute - from acceptance.
- 7.8 Where, following our notification of defects, delivery items are repaired or replaced, the limitation period under Clause 7.7 relating to this defect in these parts shall begin anew unless the subsequent performance work was minor or expressly indicated to be a gesture of goodwill by the Supplier.

**8. Third-party intellectual property rights**

The Supplier shall be liable for ensuring that the use of the goods which it supplies does not infringe, either directly or indirectly, in the country of manufacture and use, any intellectual property rights or other rights not subject to special legal protection and shall indemnify us and our customers against all claims arising therefrom. We will inform the Supplier of the place of use, upon request. In addition, the Supplier shall be liable for any additional direct or indirect loss incurred by us as the result of an infringement of such rights. In the case of fault-based liability, the Supplier is not liable, and the indemnity only applies insofar as the Supplier is not responsible for the infringement. Furthermore, the Supplier is not liable insofar as it manufactures goods according to our drawings and models and does not know or is not required to know that the manufacture of these goods constitutes an infringement of rights in the aforementioned sense.

**9. Customer-furnished parts (CFP)**

- 9.1 If we furnish the Supplier with parts, the Supplier is obliged to check whether such parts (hereinafter referred to as "CFP") are suitable and usable for the agreed processing and whether they contain any defects. The Supplier must notify us in writing, without undue delay, of all open defects contained in the CFP, at the time of handover. The Supplier may only handle and process CFP which are free of defects. CFP must be used exclusively in accordance with the intended purpose.
- 9.2 CFP remain our property. They must be stored in an organised manner, separately from other items not belonging to us, and labelled as our property. Our ownership must also be indicated in the business records.
- 9.3 The Supplier shall bear the risk of accidental damage to the CFP as well as the risk of its accidental destruction. The Supplier is obliged to adequately insure the CFP at replacement value against damage or loss due to fire, water or burglary, at its own expense.

9.4 Any processing or transformation of the CFP is always carried out by the Supplier on our behalf. Where CFE is processed together with other items not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of the CFP to the other processed items at the time of processing. If the new item is considered to be the Supplier's main item, the Supplier must transfer a proportionate co-ownership share to us. The Supplier shall store our (co-owned-) property free of charge.

#### **10. Samples, drawings, manufacturing equipment**

- 10.1 Documents of any kind, such as for example drawings as well as samples, models or manufacturing equipment (hereinafter referred to collectively as "Manufacturing Equipment"), which we make available to the Supplier, shall remain our property and shall be returned to us free of charge and without request as soon as they are no longer required for execution of the purchase order. They must not in any way be made accessible to third parties. The same applies to Manufacturing Equipment which the Supplier has produced or developed according to our specifications or with our cooperation.
- 10.2 Manufacturing Equipment, which is manufactured at our behest and paid for by us, shall become our property upon payment in full. Instead of possession being transferred, we will loan the Manufacturing Equipment to the Supplier. We may require Manufacturing Equipment to be returned at any time, unless expressly agreed otherwise in writing. The Supplier shall store Manufacturing Equipment belonging to us separately from other items that are not our property. Our ownership must be indicated on the Manufacturing Equipment itself and in the business records. Following termination of the business relationship, the Manufacturing Equipment must be returned to us at our request. It must be adequately insured by the Supplier against loss and damage. The Supplier must not use it for its own purposes or make it available to third parties.
- 10.3 Products that are manufactured according to documentation developed by us (such as drawings, models and such like) or according to our confidential information or using our Manufacturing Equipment or copies of our Manufacturing Equipment, must not be used by the Supplier itself for its own purposes or offered or supplied to third parties.

#### **11. Trade Secrets**

- 11.1 All confidential information and items of any kind, such as samples, drawings, tools, models and all other details of the order and its deliveries and work which the Supplier receives from us intentionally or by chance (hereinafter referred to as "Confidential Information") must be regarded by the Supplier as trade secrets and kept secret from third parties.
- 11.2 Reference to our company name for advertising purposes is only permitted with our prior written consent.
- 11.3 All Confidential Information as well as all other documents and items which we make available to the Supplier shall - to the extent permitted by law - be returned to us free of charge as soon as they are no longer required for the execution of the order, without being requested, or otherwise at any time upon request. Electronically stored documents shall be deleted insofar as this is technically possible and reasonable. Confidential Information must not be used by the Supplier for its own purposes or made accessible to third parties.

#### **12. Product liability, insurance**

- 12.1 Where claims are brought against us by a customer or other third party based on product liability, the Supplier is obliged to indemnify us, at our first written request, against such claims insofar as the damage was caused by a defect in the product delivered by the Supplier. In the case of fault-based liability, however, this does not apply if the Supplier is not responsible for the breach of duty.
- 12.2 Insofar as the cause of damage lies within the Supplier's area of responsibility, proof of a causal link between the defect and the damage shall suffice; otherwise the Supplier bears the burden of proof.
- 12.3 The Supplier shall in any case assume the costs and expenses corresponding to its share of causation or, in the case of fault-based liability, its share of the fault, including the costs of any litigation or recall.
- 12.4 The Supplier is obliged to cover its risk of liability by way of adequate insurance and provide proof of cover on request.

**13. Miscellaneous provisions**

13.1 Place of performance for all deliveries of goods and services shall be our registered office.

13.2 German law applies. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

13.3 The court responsible for our registered office shall have jurisdiction. We are, however, entitled to bring actions in the court with jurisdiction over the Supplier's registered office.

Bad Säckingen, December 2022

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