

**1. General**

- 1.1 These terms and conditions shall become an integral part of the purchasing contract. Delivery conditions to the contrary of or deviating from these terms and conditions or any other limitations of Supplier shall not be recognised unless the Buyer has, in an individual case, expressly agreed to them in writing; in such a case, the consent only applies to the transaction for which the consent is granted. The consent requirement shall apply in any case, even if the Buyer, being aware of Supplier's Terms and Conditions of Sale, accepts Supplier's delivery without reservation. With the acceptance of an order by Supplier, at the latest with the delivery or performance of the service, Supplier acknowledges the sole binding nature of these General Purchasing Terms and Conditions.
- 1.2 Other understandings, amendments or ancillary agreements shall only be valid when Buyer agrees to them in writing.
- 1.3 These General Purchasing Terms and Conditions shall also apply to any and all future transactions with Supplier, until new terms and conditions are agreed.
- 1.4 These General Purchasing Terms and Conditions apply exclusively vis-à-vis entrepreneurs (§ 14 of the German Civil Code ("BGB")), legal entities under public law or special funds under public law within the meaning of § 310 sub-section 1 BGB.

**2. Quotation**

- 2.1 In his quotation, Supplier has to closely adhere to the inquiry and in case of deviations, he has to expressly point these out.
- 2.2 The quotation is provided free of charge and does not establish any obligations for the inquiring party. Quotations shall only be remunerated upon specific agreement.

**3. Order and conclusion of contract**

- 3.1 Orders and order changes are only legally binding if and when they are made by Buyer in writing or electronically. The contents of oral or telephone discussions shall, in case of doubt, only be binding when confirmed in writing.
- 3.2 Any order and order change has to be confirmed by Supplier at the latest within three work days in writing and handled separately within his overall correspondence. Decisive for the timely acceptance is the receipt by Buyer of the declaration of acceptance. The contract shall only be concluded upon timely confirmation of the order. A delayed acceptance shall be deemed to be a new offer and shall require acceptance by Buyer.
- 3.3 All documents have to show: purchasing department, complete order number, date of order and reference number of Buyer.

**4. Delivery, time of delivery, delivery delay and passage of risk**

- 4.1 Delivery shall be made to the destination specified in the order. If the destination is not specified and nothing else has been agreed, the delivery shall be made at Buyer's place of business. The respective destination shall also be the place of performance for the delivery and any subsequent performance. INCOTERMS® 2020 shall apply as specified in the order.
- 4.2 The time of delivery shall be provided in the order and is binding, unless Buyer has expressly agreed to another delivery time in writing. As soon as Supplier has reason for the assumption that he may be fully or partly unable to fulfil his contractual obligations at all or not on time, he has to advise Buyer without delay, providing reasons for this circumstance and the expected duration of the delay. Should Supplier fail to give this notice, he shall be liable for damages resulting from or in connection with such failure to give notice in addition to any other remedies available to the

Buyer including damages, unless he proves that he is not responsible for the fact that such notice was not furnished on time.

- 4.3 Supplier shall only be entitled to make an early delivery or partial delivery if this has been expressly agreed in advance. Otherwise, Buyer is entitled to return the delivery at Supplier's expense and risk. If the delivery is accepted, the payment obligation shall not commence before the agreed delivery date.
- 4.4 If Supplier fails to perform within the agreed delivery time, he shall be liable under the provisions of law.
- 4.5 The risk of accidental loss and accidental deterioration of the item shall pass to Buyer upon delivery. If acceptance has been agreed, this shall be decisive for the passage of risk. INCOTERMS® 2020 shall apply as specified in the order.

**5. Liability for defects, notice of defects and liability**

- 5.1 Supplier warrants that the delivery item has no defect affecting its value or suitability, that it has the agreed or warranted quality, is suited for the use provided for in the contract, that it is in keeping with generally accepted rules of engineering and the most recent rules and regulations of the authorities, the applicable statutory provisions, the safety-related requirements as applicable from case to case as well as the rules and regulations for safety and health at work and the prevention of accidents, in each of the cases above both those standards at the Buyer's place of business and those – where different - at the place of intended use. If the delivery item does not fulfil these requirements, Buyer may, in his discretion, claim remedy of the defect or supply of an item free from defects; in the event that the additional statutory requirements are fulfilled, he may rescind the contract, reduce the purchase price, and/or claim damages including damages in place of performance and/or reimbursement of expenses incurred in vain.
- 5.2 If Supplier has also assumed a guarantee for the quality or durability of the delivery item, Buyer may additionally also assert claims under such guarantee. This shall not apply to defects or damages of the delivery item caused by
  - a) normal wear and tear,
  - b) improper handling by Buyer.
- 5.3 Obvious and patent defects must be reported within 7 working days from the receipt of the item ("Ablieferung"). Non-apparent (hidden) defects shall also be notified within 7 working days after discovery of the defect, taking into account an inspection that is feasible in the ordinary course of business (e.g. a quality analysis).
- 5.4 Notwithstanding § 438 sub-section 1 no. 3 BGB, the general limitation period for claims based on defects shall be 3 years from the passage of risk. Insofar as an acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall apply mutatis mutandis to claims arising from legal defects, whereby the statutory limitation period for claims in rem of third parties for surrender of goods (§ 438 sub-section 1 no. 1 BGB) shall remain unaffected.
- 5.5 Supplier's warranty for defects shall also extend to parts manufactured by sub-suppliers.
- 5.6 A notice of defects shall suspend the statute of limitations by the period between notice and elimination of the defect. If the delivery item is wholly or substantially renewed, repaired or newly supplied in whole or in essential parts, then the warranty period for defects shall start to run again for the entire item, in case of partial renewal, this shall apply to the renewed parts.
- 5.7 The rejected parts will, in case of replacement, become property of Supplier after their removal; he will be responsible for their proper disposal.

5.8 If Supplier has failed to remedy the defect within a reasonable period of time, or if such remedy of defects has failed once, Buyer shall be entitled to have the defect remedied on Supplier's account.

5.9 Supplier shall hold Buyer harmless from any claims under manufacturer's liability as well as based on any applicable product liability act, – in the event that any such product liability act is applicable - if and to the extent that Supplier or his sub-supplier have caused the product defect being the cause for such liability. Otherwise, Supplier is free to prove that he is not responsible for the defect being the cause for such liability.

5.10 Within the scope of its indemnification obligation, Supplier shall reimburse expenses pursuant to §§ 683, 670 BGB arising from or in connection with a third-party claim including recall actions carried out by Buyer. Buyer shall inform Supplier about the content and scope of recall measures - to the extent possible and reasonable - and give Supplier the opportunity to comment. Further statutory claims shall remain unaffected.

5.11 Supplier guarantees that the substances supplied are, if necessary, registered under the provisions of the REACH directive with regard to their features and use as provided for in the contract.

## **6. Inspections and product approval**

If inspections have been scheduled for the delivery item, Supplier shall bear all inspection costs. If repeated or further inspections are required on account of defects ascertained, Supplier shall bear all costs of material and personnel in relation thereto. Supplier shall bear the costs of material and personnel for material certificates for the input materials. This shall also apply to the approval costs for the products to be supplied by Supplier or the delivery item.

## **7. Insurances**

7.1 Supplier shall obtain transport insurance at its own expense.

7.2 Unless agreed otherwise, Supplier has, at his own expense, to conclude a liability insurance with reasonable (sufficient) minimum cover for damages caused by himself, his staff or his agents through services provided or items delivered; on Buyer's request; he has to provide evidence of this. The insurance shall be maintained until the expiry of the limitation period for defect rights in respect of the last order confirmed by the Supplier. Supplier's liability is not limited by the conclusion and proof of any liability insurance.

7.3 Conclusion of special erection insurance in addition to the liability insurance under Item 7.2 above shall from case to case require a specific agreement between Buyer and Supplier.

7.4 Machines, devices etc. put at Buyer's disposal will be insured against normal risks by Buyer. Any further liability of Buyer for the destruction of or damage to the machines, devices etc. put at his disposal will be excluded – with the exception of cases where this is committed intentionally or on account of gross negligence.

## **8. Shipping instructions**

8.1 For each individual shipment, Supplier has to send a detailed shipping notice, separately from goods and invoice, on the day of shipment. The delivery has to be accompanied by a delivery bill and packing slip. In case of shipment by ship/boat, the name of the shipping line and of the vessel has to be shown on the shipping documents and the invoice. Supplier has to select those means of transportation which are most favourable and best suited for Buyer. In all shipping notices, delivery bills, packing slips, bills of lading, invoices, on the exterior packaging etc., the order symbols and data on the place of unloading as prescribed by Buyer have to be indicated in full.

8.2 As a matter of principle, Supplier has to package, identify and ship hazardous products according to nationally/internationally applicable provisions. Apart from the class of hazard, accompanying documents also have to include further indications as determined in the respective shipping regulations.

8.3 Supplier shall be liable for damages and take over any costs incurred due to non-observance of these regulations, unless he proves that he is not to be held responsible for the event causing such liability. In this respect, he shall also be responsible for observation of these shipping regulations by his sub-suppliers.

8.4 All shipments which cannot be accepted on account of non-observance of these regulations will be stored at Supplier's costs and risk. Buyer is entitled to determine contents and condition of such shipments. It is not permitted to load tools and equipment together with the delivery items.

## **9. Calculation - prices**

9.1 In the event that Supplier reduces his prices and improves his conditions during the period between order and delivery, the prices and conditions which are valid on the day of delivery shall apply.

9.2 Unless otherwise provided for in the order, prices for purchases by residents of Germany or of the European Union shall be free Buyer's point of delivery, freight, packaging, insurance etc. included, and exclusive any statutory turnover tax which may become due.

9.3 Unless otherwise provided for in the order, prices for purchases from non-residents of the European Union shall be free Buyer's point of delivery, including freight, packaging, insurance, statutory turnover tax and customs duty.

## **10. Invoice and payment**

10.1 Wording, order of the text and prices of invoices have to correspond to the respective order. Additions or reductions of deliveries have to be listed separately in the invoice..

10.2 Invoices must not be issued before the goods have been received.

10.3 Interest upon the due date of payment shall not be owed. The statutory provisions shall apply to default in payment.

## **11. Documents**

11.1 Any and all drawings, standards, guidelines, analysis methods, formulations and other documents provided by Buyer to Supplier for the purpose of manufacturing the delivery item, as well as any documents compiled by Supplier on the basis of specific data of Buyer shall remain the property of Buyer and may not be used by Supplier for any other purposes nor reproduced or disclosed to any third parties. Upon request, they have to be handed over to Buyer without delay, including any and all copies and reproductions. Buyer reserves the industrial property rights and copyrights in any and all documents handed over to Supplier.

11.2 Participation of Buyer by way of technical discussions or explanations does not release Supplier any from duties under warranties for defects and other obligations.

11.3 Documents of any kind, which Buyer requires for use, erection, assembly, processing, storage, operation, maintenance, inspection, upkeep and repair of the delivery item have to be provided by Supplier in a timely manner, without being requested to do so, and free of charge.

11.4 Standards and guidelines mentioned by Buyer shall apply in their latest relevant version. Works standards and guidelines of Buyer have to be requested by Supplier in a timely fashion,

unless they were furnished already.

## **12. Confidentiality**

- 12.1 Supplier is obliged to keep secret all business secrets within the meaning of § 2 no. 1 of the German Act on the Protection of Business Secrets (GeschGehG) as well as other confidential information and not to disclose them to any third party, unless Supplier is statutorily or officially obliged to disclose information. In this case, Supplier shall inform Buyer thereof without undue delay within the scope of what is legally permissible and, in coordination with Buyer, shall take necessary and legally permissible measures to limit the scope of disclosure as far as possible and to ensure the greatest possible confidential treatment.
- 12.2 The information protected as a business secret includes in particular all information relating to orders and changes to orders, as well as all drawings, standards, guidelines, analysis methods, formulations and other documents, irrespective of the form in which this information is provided (e.g. in writing, orally, by telephone, by e-mail, by fax, on data carriers of various kinds, by means of remote data transmission of any kind or by post). All information that is perceived visually and/or acoustically is also included.
- 12.3 Not covered by confidentiality is information and documentation that is generally accessible or known.
- 12.4 Supplier may only disclose or pass on the confidential information to third parties with the express prior written consent of Buyer. The disclosure of the confidential information to employees and agents is only permitted to the extent necessary for the performance of the obligations incumbent on Supplier and only where these are bound to confidentiality requirements meeting at least the standards contained herein..
- 12.5 This confidentiality obligation exists for a period of time of three years following the conclusion of the contract.
- 12.6 Supplier shall obligate his sub-suppliers in accordance with this Item 12.

## **13. Items**

Moulds, models, tools, films etc, which were produced by Supplier for the purpose of performing the order shall, by means of payment, vest in Buyer, even when they remain in the possession of the Supplier. Upon request, these items have to be handed over to Buyer without delay.

## **14. Assembly, maintenance, inspection, repair etc.**

- 14.1 If assembly, maintenance, inspection, repair or other activities are carried out in a Buyer facility, the safety and administrative regulations for outside companies carrying out orders on the premises of H.C. Starck Solution plants shall apply. These will be handed over before work commences; if necessary, they have to be requested from the works protection department.
- 14.2 Buyer shall not bear any risk for property of Supplier or his staff which was brought into the Buyer's plant.

## **15. IP rights, patent and license infringement**

- 15.1 Supplier is liable for ensuring that patents, licences or other intellectual property rights of third parties are not violated by the delivery and use of the delivery items in each of the cases above both at the Buyer's place of business and – where different – at the place of intended use, unless he proves that he is not to be held responsible for the event causing such liability. Applicable licence fees shall be borne by Supplier.
- 15.2 Supplier shall indemnify Buyer and Buyer's customers from any claims of third parties arising from the infringement of intellectual property rights, unless he proves that he is not to be held responsible for the event causing such liability.

## **16. Promotional material**

References to the business relationship with Buyer in information and promotional material shall only be permitted with the express, written approval by Buyer.

## **17. Applicable law and place of jurisdiction**

- 17.1 German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded; the same applies to the rules concerning international competence.
- 17.2 Exclusive place of jurisdiction, to the extent legally permissible, shall be Jena (Germany).

## **18. Data protection**

The contractual partners shall uphold the applicable provisions concerning data protection. Further information regarding the processing of personal data by Buyer is contained in its separate data protection instructions.

## **19. Export control – origin of goods and conflict free sourcing – due diligence (German Supply Chain Act – Lieferkettengesetz)**

- 19.1 In the performance of the contract, Supplier has the obligation to observe the relevant regulations and conditions imposed by law and the authorities.
- 19.2 In the course of its performance of the contract, Supplier shall provide the commercial origin and the customs tariff number (HS-/KN-Code)
- 19.3 Supplier shall in particular be liable for ensuring that no embargo provisions of the UN Security Council, the European Commission or any national legislators are violated or ignored by supplying the delivery items. Supplier shall bear the exclusive responsibility for proper exportation of the delivery items from the country of shipping; he shall in particular undertake to obtain any and all permissions required in foreign trade.
- 19.4 Supplier shall provide notification in writing as early as possible before the delivery date about any licensing requirements for its goods under the applicable German, European (EU), and/or US export, customs and foreign trade law as well as under the export, customs and foreign trade law of the country of origin of its goods. For this purpose, Supplier shall provide the following information and data:
- the export list number pursuant to Annex AL to the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*) or comparable list items of relevant export lists;
  - the list item in accordance with Annex I to the European Dual-Use Regulation;
  - the "Export Control Classification Number" (ECCN) according to the U.S. Commerce Control List (CCL), if the goods are subject to the U.S. Export Administration Regulations (EAR);
  - the list item of the United States Munitions List (USML), if the goods are subject to the International Traffic in Arms Regulations (ITAR).
- 19.5 The goods supplied have to fulfil the conditions of origin of the preferential agreements of the EU, unless the order confirmation contains any explicit statement to the contrary.
- 19.6 Supplier shall ensure that the delivered goods comply with the OECD Due Diligence Guidance for Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and that the applicable due diligence obligations and provisions are complied with, such as in particular under Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum, tungsten, their ores and gold from conflict-affected and high-

risk areas as well as under the future Supply Chain Act (*Lieferkettengesetz*).

- 19.7 Supplier grants Buyer the right to audit at any time the production sites of Supplier or the relevant upstream suppliers and to verify the Supplier's compliance with the Buyer's Responsible Supply Chain Management System.

## **20. Force Majeure, Cancellation**

- 20.1 All events of force majeure which prevent Buyer from fulfilling the contractual obligation under a contract, e.g. acceptance obligation, shall entitle Buyer to postpone the corresponding obligation by the duration of the hindrance. Insofar as the fulfillment of the obligation becomes impossible or unreasonable as a result of force majeure, Buyer is entitled to withdraw from the contract. Supplier shall have the same right if he cannot reasonably be expected to maintain the contract. Force majeure shall include in particular strikes, lockouts, natural disasters, war, terrorism, riots and insurrections as well as other circumstances for which Buyer is not responsible and which could not have been foreseen by the exercise of reasonable diligence and which considerably impede, endanger or impair the performance of the obligation or render it impossible, irrespective of whether they occur to the Buyer or a third-party.
- 20.2 If insolvency proceedings or similar court or out-of-court proceedings are applied for, opened or rejected for lack of assets against the assets of Supplier, Buyer shall be entitled to withdraw from the contract. Other statutory rights of withdrawal shall remain unaffected.

## **21. Place of performance, Incoterms**

- 21.1 Place of performance is the destination determined by Buyer. Unless indicated otherwise in the order, place of performance is the registered office of Buyer.
- 21.2 The INCOTERMS® 2020 shall apply as specified in the order. Where not otherwise agreed in the order, the Incoterms ® 2020 as per the provisions of the term DDP apply with the destination provided for in Item 4.1.

## **22. Final provision**

If parts of these terms and conditions or of the further agreement reached prove to be invalid, the remainder of the contract shall remain in force. The contracting parties shall replace the invalid provision with a provision that is equivalent to it in terms of economic results.