

General Conditions for Purchase of Products and Services

1. Contract

Any order, contract as well as additions or amendments thereto is only binding if issued by the Ordering Party in writing or confirmed in writing. The contract between the Ordering Party and the Contractor is governed exclusively by these General Conditions of Purchase. The general terms and conditions of the Contractor are herewith rejected. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract.

2. Responsibility for Selection by Ordering Party

Any approval of the Ordering Party of drawings, calculations and other materials as well as any involvement in technical or official examinations, testing or acceptance procedures shall not affect the sole responsibility of the Contractor for its goods and services. This shall also apply to any suggestions, recommendations and other involvement of the Ordering Party.

3. Inspection by Ordering Party

Subject to prior notice the Ordering Party has the right to require entry to the production facilities of the Contractor and/or its subcontractors in order to inspect, amongst other aspects, the production premises, the use of suitable materials, the employment of the necessary trained personnel and the correct performance of the work. Any inspection shall have no legal effect on the formal acceptance of the goods or services.

4. Spare Parts

The Contractor shall ensure that spare and replacement parts are available for a minimum period of 10 years after the expiry of the time limit for claims for defects.

5. Delivery and Storage

The specific delivery provisions shall be taken from the respective order. The delivery note and any further document shall be attached to the outside of the delivery in a clearly identifiable manner and in a clear and transparent plastic envelope to protect against loss. In the event that any delivery consists of several packages, each package shall have a delivery note with the mark "Delivery Note Attached Here"

In packing the following principles are to be observed:

- Goods shall always be packed so as to exclude the possibility of damage from normal transport and storage handling.
- Only one material number (order item) may be packed in any cover, i.e. different material numbers as well as order items should be clearly separated from each other.
- Each cover shall be labelled with the material number, the description and the contained quantity.
- In so far as assembly kits are delivered as individual parts (not assembled) such shall be delivered in kits, i.e. parts for the same assembly kit shall be contained in a single cover.
- In cases of delivery of small parts the delivery item and the packaging material should be clearly identifiable as such.

Any extra costs and damage resulting from the non-observance of the above terms shall be borne by the Contractor.

6. Export Control

On the basis of the German Law of Export Control (German AWG), the German Law of Armament Control (German KWKG) as well as other laws and regulations the Contractor shall notify the Ordering Party in writing and without delay if any of the goods or services to be provided are subject to official approval or permission.

7. Times, Dates and Deadlines

The delivery dates and performance deadlines set out in the order and Contract are binding. In the event of non-conformity the Contractor shall be in breach of Contract without any further requirement of notification. In the event that the Contractor becomes aware that any agreed date or deadline cannot be met, the Contractor shall inform the Ordering Party of such in writing without delay. Any early delivery or performance requires the approval of the Ordering Party.

8. Delay

In the event that the Contractor is delayed with any delivery or performance, the Ordering Party may demand liquidated damages to the amount of 0.5 % of the contract price for each commenced week of delay up to a maximum of 10 % of the contract price and without any requirement to prove actual damage. The liquidated damages shall be due from the time that such are claimed and may be deducted by the Ordering Party from any contract payment due. The payment of any liquidated damages does not release the Contractor from its duty to perform services or provide goods or deliveries. Any right to liquidated damages is not excluded or extinguished by the acceptance of goods or services by the Ordering Party without reserving the right to claim such damages. However, the Ordering Party shall make any claim to such no later than at the time of the last contract payment. The right of the Ordering Party to claim further damages exceeding any liquidated damages for damage which can be proven, shall not be limited hereby. In particular the Ordering Party may arrange for substitute performance by a third party or undertake performance itself at the expense of the Contractor if a further deadline for performance has expired or if because of the delay the Ordering Party has no further interest in such delivery or performance without any requirement of a further deadline being set. If any materials are necessary for such substitute performance and the Contractor is in possession of such materials, such shall be provided to the Ordering Party without delay. In so far as any industrial property rights limit any delivery or performance by a third party, the Contractor shall provide all necessary declarations in order to make such rights available.

9. Prices

Unless otherwise expressly agreed, the agreed contract prices are fixed and not subject to change and are for delivery to the agreed place of use and include the normal trade packaging. Any dispute or difference of opinion as to the amounts of payment due to the Contractor does not entitle the Contractor to withhold any delivery or performance in part or whole even temporarily.

10. Delivery note, Invoicing and Conditions of Payment

10.1 Each consignment of goods shall be accompanied by a delivery note with indication of the order number and subject number and all other documents stipulated in the contract. In the case of contracts stipulating the production of certificates, this shall include also the Certificate or Certificates demanded by the Ordering Party.

10.2 Invoices must be provided in a verifiable form and shall contain at least the order number, the complete order reference code and the order date of the Ordering Party. The invoices shall conform to the structure of the order. Unless otherwise expressly agreed by the parties, the Ordering Party shall make payments 30 days, net, after delivery, performance and presentation of accounts.

The invoices shall be forwarded separately from the goods consignments, the delivery note number and the delivery date to be mentioned in the invoice.

11. Assignment

Any claim against the Ordering Party may be assigned only with the written permission of the Ordering Party. This shall not apply to assignments in terms of an extended right of retention of title. § 354a of the German Commercial Code (German HGB) shall not be affected hereby.

12. Claims based on Defects

12.1 The Contractor shall provide the goods and services with the agreed quality and free from any defect in quality or defect of title. In case of defect in quality or defect of title the Ordering Party has the legal remedies available at its choice.

According to the legal provisions, the Ordering Party is entitled, if the conditions set out in the provisions exist,

- to demand proper performance of the contract by the Contractor, or
- to remedy itself the defect and demand of the Contractor reimbursement of the expenses occurred in the necessary remedial measures, or
- to rescind the contract or claim reduction of the purchase price, or
- to demand damages in lieu of performance of the contract or reimbursement of the incurred expenses of no avail.

12.2 The Contractor waives any right to object to late notification of defects according to § 377 sub-section 1 and sub-section 2 of the German Commercial Code (German HGB). The Ordering Party shall notify the Contractor of any defect immediately upon detection of such.

12.3 Valid notices of defects of the Ordering Party shall expire within the legal deadline (§§ 438, 634a German Civil Code) but in no case earlier than 18 months after commissioning unless the commissioning is delayed for reasons for which the Contractor is not responsible. For any part of delivery or performance which cannot be used as a result of a delay in operation based on non-performance or as a result of the installing of replacement or improved parts the period during which claims may be made shall be extended by the period of the interruption. In cases of detected defects in modified or exchanged parts the Ordering Party retains the same rights to claim for defects.

13. Liability of the Contractor

The Contractor shall be liable for any and all damage caused by the Contractor and for any non-compliance with guarantees in accordance with the provisions of law. In the event that any third party makes a claim against the Ordering Party based on the goods or services of the Contractor (e.g. for product liability or environmental protection requirements) the Contractor shall indemnify and hold harmless the Ordering Party against such claims.

14. Industrial Property Rights of Third Parties

The Contractor warrants that no third party industrial property rights have been infringed by the production, delivery or operation of its goods or services and the Contractor shall indemnify and hold harmless the Ordering Party against any claims by third parties resulting from any infringements of industrial property rights.

15. Retention of Title

In so far as the Ordering Party makes available to the Contractor materials or parts for processing or further processing, the Ordering Party retains its title thereto. In cases of processing or mixing the Ordering Party retains a title of ownership to a portion of the resulting product in proportion to the value at the time of the processing of the materials or parts provided.

16. Changes in products or methods

Contractors in regular business relations with the Ordering Party are under the obligation to notify the Ordering Party in writing at an early moment of any intention to make changes of materials or parts procured from sub-suppliers for the products, changes in the products or production methods, the relocation of production sites and changes in the analysis methods used for and in connection with the products purchased.

17. Data Protection

The Contractor acknowledges and agrees to the Ordering Party storing and processing data of the Contractor related to orders.

18. Unauthorized Advertising

The use of any order as a reference or for advertising purposes shall not be permitted without the previous written permission of the Ordering Party.

19. Drawings, Models, Tools, Secrecy

Any drawings made available for the completion of an order and any other written materials, models or tools, including those produced for the Ordering Party in accordance with its requirements shall remain the property of the Ordering Party and shall be returned to the Ordering Party free of charge upon request. The above named drawings and other materials as well as any other drawings and written materials produced by the Contractor for the Ordering Party and any knowledge or know-how made available by the Ordering Party shall only be used for the purpose of the completion of an order and shall not be used in any other way nor copied nor made available to any third party. The Contractor shall be liable to the Ordering Party for any damage resulting from a breach of these provisions.

20. Anti-Bribery Clause

The Business Partner shall neither offer or give any kind of advantage to a third party either directly or indirectly, nor directly or indirectly receive, accept or let himself promise any gifts, payments or other advantages which are or could be considered as an illegal or corrupt practice. In the event of a breach of this integrity clause, Saurer may terminate the contract with immediate effect for cause.

21. Applicable Law and Jurisdiction

The law of the Federal Republic of Germany shall apply to this Contract, without regard to the application of the principles of conflicts of law. The Vienna Convention on the International Sale of Goods of the 11.04.1980 (CISG) shall not apply to this Contract. The place of the Court of Jurisdiction shall be the seat of the Ordering Party. The Ordering Party may however issue proceedings against the Contractor at the seat of business of the Contractor.