



## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

Stemmman-Technik GmbH for goods and services

February 2010

### **1. Order basis**

- a. Exclusivity clause: Stemmman-Technik GmbH (ST) orders exclusively on the basis of its General Terms and Conditions of Purchase. Other conditions shall not become the subject matter of a contract even if they are not expressly contradicted on the part of ST. The acceptance of goods or services by ST without express objection shall in no case be construed as acceptance of the contractor's conditions of supply. These General Terms and Conditions of Purchase also apply for future delivery trans- actions in the context of the current business relationship.
- b. Order cancellation: Should the contractor not accept the order from ST in writing within 10 working days of receipt, ST is entitled to cancel or change the order for the quoted contract components at any time without incurring charges.
- c. Written form requirement: only orders in writing are legally binding. Orders placed orally or by phone require subsequent written confirmation to be legally binding. The same applies for oral supplementary agreements and changes to the contract. Orders, delivery schedules and alterations and supplements thereto may also be made by means of remote data transfer or machine-readable data carriers by prior written agreement.
- d. Enquiries/quotations: in its enquiries, ST generally requests a binding quotation free of charge from the contractor with a validity period of at least 120 calendar days.

### **2. Prices**

- a. The agreed prices are fixed prices and exclude any kind of supplementary claim. In the absence of contrary agreements, the contractor shall bear the cost of carriage and packaging. In case of supply by the contractor at price terms ex works or ex stock, despatch shall be at the lowest cost in each case insofar as ST has not prescribed a particular mode of transportation. The contractor shall bear any additional costs due to non-compliance with despatch specifications. In case of carriage paid price terms, ST may also prescribe the mode of transportation. Additional costs for express despatch in order to meet a delivery deadline shall be borne by the contractor.
- b. If no prices are specified in the order, the contractor's current list prices with the usual discounts shall apply. The agreement regarding the place of fulfilment shall remain unaffected by the price terms.

### **3. Assignment of orders to third parties**

- a. The assignment of orders to third parties is not permissible without ST's written consent, and in such a case ST is entitled to withdraw either partially or fully from the contract and to demand compensation.
- b. The requirements contained in ST's procurement documents shall be passed on by the contractor to the subcontractor if necessary.

### **4. Provision of material**

- a. Materials supplied by ST remain the property of ST and shall be stored, labelled, managed and separated free of charge. They may only be used for orders from ST. The contractor shall pay compensation in case of depreciation or loss. This also applies for the calculated relinquishment of order-related material.

- b. Processing or transformation of the material shall be done for ST. ST shall become the direct owner of the new or transformed object. Should this not be possible for legal reasons, ST and the contractor are agreed that ST shall become the owner of the object at all times during processing or transformation. The contractor shall keep the new object safe for ST free of charge with all the due care and diligence of a prudent merchant.

#### **5. Tools, moulds, samples, confidentiality etc.**

- a. Likewise, tools, samples, models, profiles, drawings, standard specification sheets, print templates and jigs provided by ST and also accordingly manufactured objects may neither be passed on to third parties nor used for purposes other than those specified in the contract without written permission from ST. They shall be stored safely, protected against unauthorized inspection or use, maintained and insured against loss or damage free of charge. Subject to further rights, ST may demand their return if the contractor infringes these obligations.
- b. The contractor shall not make information obtained from ST available to third parties insofar as it is not common knowledge or has not been made available by other legal means.

#### **6. Packaging**

The goods shall be packaged so as to avoid transport damage. Packaging materials are to be used only to the extent that is necessary to achieve this purpose. Only environmentally friendly packaging materials may be used. The contractor's legal obligation to take back packaging is based on the statutory provisions.

#### **7. Confidentiality clause**

- a. The contractor shall treat the conclusion of the contract confidentially and may not refer to the business relationship with ST in advertising materials without written consent from ST.
- b. The parties to the contract undertake to treat all non-obvious commercial or technical details of which they gain knowledge through the business relationship as trade secrets. Subcontractors shall also be instructed accordingly.

#### **8. Revision clause and correction complexity in case of incorrect documents**

- a. ST can also demand changes to the delivery item or the service provided after conclusion of the contract insofar as this is reasonable for the contractor. Allowance shall be made accordingly by both parties in particular for the increased or reduced costs and delivery dates in case of such a change to the contract.
- b. The Contractor shall inform ST immediately in writing of any changes to the product and/or the process definition. Any changes require written approval from ST. Deliveries and services are regarded as defective without such approval. Relocation of production also counts as a change in the process definition.
- c. In case of deviations from agreed product properties, written delivery approval must be obtained from ST before dispatch. The contractor shall inform ST immediately if products which may be affected by the deviation have already been dispatched. The further course of action (such as granting and handling special approvals, labelling of affected products) shall then be decided upon jointly by ST and the contractor.

#### **9. Delivery deadlines, delivery delays, force majeure, premature delivery, partial deliveries**

- a. The agreed delivery deadlines are binding. Adherence to the delivery deadline or period is determined by receipt of the goods at the reception or application site specified by ST or the timeliness of successful acceptance.
- b. Should the contractor discern that an agreed deadline cannot be met for whatever reason, he shall inform ST in writing immediately, stating the reasons and the anticipated duration of the delay.
- c. The contractor is obliged to compensate ST for all direct and indirect losses caused by the delay.
- d. If the agreed delivery deadline is not adhered to for reasons for which the contractor is responsible, ST is entitled to demand compensation for non-fulfilment or to obtain replacement delivery at no additional deadline set by ST.
- e. The contractor can only plead the absence of necessary documents to be supplied by ST if he has already

reminded ST in writing about the missing documents and has not received them within a reasonable period of time.

- f. Force majeure and industrial disputes liberate the parties to the contract from delivery and service obligations for the duration of the interruption and to the extent of its effects. The parties to the contract are obliged to provide the necessary information immediately within the bounds of what is reasonable and to adjust their obligations in good faith to the altered conditions.
- g. In case of earlier delivery than agreed, ST reserves the right to return goods at the contractor's expense. If no goods are returned following premature delivery, the goods shall be stored by ST at the contractor's risk until the delivery deadline. In case of premature delivery, ST reserves the right to make no payment before the agreed due date.
- h. ST accepts partial deliveries only after express prior agreement. In case of agreed partial deliveries the remaining quantity must also be listed.

#### **10. Invoices**

- a. Invoices shall be presented to ST separately in duplicate with all associated documents and data following successful delivery or rendering of service in due form.
- b. Invoices not presented in due form only count as received as from the point in time that they have been corrected. An invoice is regarded as correct when it is error-free and verifiable for ST, i.e. it must contain at least ST's order number, ST's article number, ST's item number and an article description.

#### **11. Payments**

- a. The term of payment for invoices begins following delivery or provision of service and also delivery of the agreed certificates and documents and following receipt of an orderly, correct and verifiable invoice.
- b. Insofar as certificates regarding material tests, factory certification or the like have been agreed, these form a significant part of the delivery or service and shall be handed over to ST together with the invoice.
- c. In the absence of contrary arrangements, payments are made within 14 days minus 3% discount or within 30 days net calculated as from delivery/provision of service and presentation of an orderly, error-free and verifiable invoice.
- d. In case of faulty delivery/service, ST is entitled to withhold payment proportionally until fulfilment is corrected.
- e. Payments do not indicate any recognition of the delivery/service as being in accordance with the contract.

#### **12. Contractual penalties**

- a. In the absence of any other specified date, 12:00 on the Friday of the named calendar week is the last possible delivery date.
- b. In case of delay, ST is entitled to demand 0.3 % of the order value per calendar day during the delay period as a contractual penalty.
- c. The total amount of the contractual penalty is limited to a maximum of 10% of the respective total order value. ST will still demand the contractual penalty even if ST accepts late deliveries from the contractor. The service, nor does it exclude compensation claims over and above contractual penalty claims.
- e. The contractual penalty shall be invoiced directly by means of a debit note in accordance with the frequency defined by ST.

#### **13. Reservation of title and other security rights**

ST recognizes no rights to reservation of title or other security rights, regardless of their form, content, effect and scope, and hereby expressly contradicts any such rights.

#### 14. Technical properties

- a. Technical properties disclosed in data sheets, specifications, technical leaflets and the like count as contractually guaranteed properties of the delivery item or service.
- b. The contractor is obliged to comply with substance prohibitions and limitations in accordance with current statutory regulations, in particular the Chemicals Act, EC guideline 1907/2006/EC (REACH), EC guideline 2002/95/EG (RoHS) and the Hazardous Substances Act.

#### 15. Technical documentation

Insofar as this is stipulated in the order, ST shall receive free of charge

With the order confirmation:

- Binding scale drawings and complete technical data (in duplicate)
- Assembly, operating and maintenance instructions
- Replacement parts lists and drawings
- Relevant papers, preferably in A4 format, number of drawings optional, in German, English or French.
- If requested, drawings in DXF format on a data carrier, texts in a generally current file format

With the invoice:

- Test protocols and factory certificates.

#### 16. ST's claims in case of defects, guarantee, product liability

- a. The contractor guarantees that all deliveries and services correspond to the latest state of technology, the relevant statutory regulations and the regulations and guidelines of authorities, employers' mutual insurance associations and professional associations. If deviations from these regulations are necessary in individual cases the contractor must obtain ST's written consent. The contractor's warranty obligations are not limited by this agreement. If the contractor has misgivings about the performance desired by ST, the contractor must communicate this immediately in writing.
- b. The contractor undertakes to deploy environmentally friendly products and processes in his deliveries and services and also with supplies or ancillary services by third parties within his economic and legal possibilities. He is liable for the environmental friendliness of the products supplied and packaging materials and for all subsequent losses caused by the infringement of his statutory disposal obligations.
- c. ST shall immediately inform the contractor in writing of unresolved defects in the delivery item or service as soon as they are discovered as part of the normal course of business but within 14 calendar days of receipt of delivery by ST at the latest.
- d. During the warranty period, the contractor shall immediately remedy reported defects in the delivery or service, including the non-achievement of guaranteed properties, free of charge on demand including all ancillary expenses either through correction or replacement at ST's discretion. In the case of rectification of defects, the supplier is obliged to bear all necessary costs, in particular transport, handling, labour and material costs necessary to rectify the defect. This also applies insofar as the expenses in-ST is also entitled to statutory claims.
- e. If the contractor culpably does not fulfil his warranty obligations within a reasonable deadline set by ST, ST can take the necessary measures itself at the contractor's expense and risk – regardless of his warranty obligation – or have them taken by third parties. In urgent cases, ST may perform the rectification themselves in consultation with the contractor or have it performed by a third party. Small defects can be rectified by ST themselves – in fulfilment of the duty to avert, minimise or mitigate losses – without prior consultation without affecting any warranty obligation of the contractor's. ST can then charge the contractor for the necessary expenses. The same applies in case of the threat of abnormally high losses.
- f. The warranty period lasts 24 months, calculated as from the transfer of risk. It does not end before the period named in Section 479 paragraph 2 of the German Civil Code, which applies accordingly. The warranty period is suspended at the time of notification of the defect.

- g. The warranty claim expires six months after notification of the defect but not before the end of the warranty period.
- h. If claims are made against ST due to infringement of statutory regulations or due to domestic or international product liability regulations or laws due to defectiveness of its services or products which can be attributed to the contractor's services or products, ST is entitled to demand compensation from the contractor for this loss insofar as it was caused by services or products supplied by the contractor. This loss also includes the costs of a precautionary recall. The contractor shall label his delivery items in such a way that they are permanently identifiable as his products.
- i. The contractor shall adequately insure himself against all risks arising from product liability, including the risk of recall, and provide ST with the insurance policy for inspection on request.
- j. The contractor is obliged to supply replacement parts for the usual period of technical use and for at least 10 years after the last delivery of the delivery item at appropriate conditions. If the contractor discontinues supply of the replacement parts after expiry or during the aforementioned deadline, they shall give ST the opportunity to place a final order or provide ST with the appropriate manufacturing documents free of charge.

#### **17. Right of access**

The contractor shall grant ST, their customers and regulatory authorities access to all facilities involved in the order and all relevant drawings by appointment.

#### **18. Trade mark rights**

- a. The contractor guarantees that all deliveries and services are free of third party trade mark rights and in particular that no third party patents, licences or other trade mark rights are infringed by the supply or delivery and use of items and services.
- b. The contractor shall indemnify ST and its customers against third party claims due to any trade mark right infringements and shall also bear all costs which ST incurs in this regard.
- c. ST is entitled to secure approval for the use of relevant delivery items and services from the beneficiary at the contractor's expense.

#### **19. Export laws**

- a. The contractor shall ascertain that his country's export laws are not infringed by the agreed delivery or service. He shall exempt ST against all infringements of rights which affect domestic laws.
- b. On the basis of the Foreign Trade Act (AWG), the War Weapons Control Act (KWKG) and similar laws, the contractor shall immediately inform ST whether the goods to be delivered by him are subject to export authorization as part of the export regulations.

#### **20. Final provisions**

Should individual parts of these provisions be legally invalid, this does not impair the effectiveness of the remaining provisions. The ineffective clause shall be replaced with the nearest permissible clause in accordance with the law and case law which regulates the economic and legal meaning in the closest maximum permissible manner.

#### **21. Choice of law, place of jurisdiction, place of fulfilment**

- a. In case of legal disputes arising from the contract, the law of the Federal Republic of Germany— excluding the United Nations agreement on contracts regarding the international sale of goods dated 11/04/1980 (UN purchase law, Federal Legal Gazette 1989 II 588, BER 1990 II, 16699) shall apply in accordance with these conditions of purchase.
- b. Insofar as the contractor is a registered trader, the place of jurisdiction for all disputes including those regarding

from bills of exchange and cheques shall be Rheine District Court or Münster District Court; ST is, however, entitled to take action against the contractor at his place of residence.

- c. In the absence of express contradictory agreements, the place of fulfilment for delivery obligations is our desired delivery address or place of use; for all other obligations for both parties it is ST's main place of business.