

## GENERAL TERMS AND CONDITIONS OF PURCHASE

STEMMANN-TECHNIK GmbH, Niedersachsenstraße 2, 48465 Schüttorf

Version: 01/2020

### 1. General information

- a. These General Terms and Conditions of Purchase („GTP“) apply to all sales, deliveries, services and offers (individually or jointly also referred to as the **“Delivery”** or **“Deliveries”**) made to the STEMMANN-TECHNIK GmbH, Niedersachsenstraße 2, 48465 Schüttorf (**“ST”**, **“we”**, **“us”**, **“our”**) by sellers, suppliers, service providers, contractors (hereinafter **“Supplier”**; Supplier and ST jointly referred to as the **“Parties”** or individually as a **“Party”**). These GTP are an integral component of all contracts that we conclude with our Suppliers regarding the Deliveries provided by our Suppliers. The GTP also apply to future Deliveries (in the version current at the time) even if they are not specifically agreed upon again.
- b. General terms and conditions used by the Supplier or third parties do not apply even if we do not specifically dissent to their application in the individual case. Even if we refer to a document or the like that contains general terms and conditions by the Supplier or a third party or make reference thereto, this shall not be considered a consent to the application of such terms and conditions.

### 2. Orders and commissions

- a. Insofar as our offers or orders do not expressly contain a commitment period, we will consider ourselves bound for a period of ten business days after the date of the offer or the order. Decisive for the timely acceptance is the time of our receipt of the acceptance declaration.
- b. We are entitled to alter the time and place of the Delivery as well as the type of packaging at any time by written notice at least 10 calendar days before the agreed delivery date. The same applies to the alteration of product specifications if this can be implemented by the Supplier within its normal production process without substantial additional effort. In this case, however, the notification period according to sentence 1 is at least 2 calendar days. We will reimburse the Supplier for any proven and reasonable extra costs that were incurred due to the alteration in each case. If such alterations lead to delays in delivery that cannot be avoided in the Supplier’s normal production and business processes by reasonable effort, the original delivery date will be postponed accordingly. After making a careful estimate of such, the Supplier will notify us of the expected extra costs or delivery days in good time before the delivery date, at least, however, within 10 business days after receipt of our notice according to section 2.b. sentence 1 or sentence 2 in writing.
- c. We are entitled to withdraw from the contract at any time by written declaration providing the reason if we can no longer use the ordered Deliveries in our business operations due to circumstances which occurred after conclusion of the contract. In this case we will compensate the Supplier for any partial performances they have provided.
- d. Only written orders by ST or those issued by email or by fax are binding. Oral orders or orders by telephone require a subsequent confirmation in writing, by email or by fax to be valid.
- e. In its inquiries ST generally asks that the Supplier makes a binding offer free of charge with a commitment period of at least 120 calendar days. Quotations and offers by the Supplier are free of charge and non-binding for us even if we have requested them.

### 3. Prices

- a. The agreed prices are fixed prices. Unless the parties agree otherwise in writing, all prices will be considered DDP (Incoterms 2020), including costs of delivery, transport, insurance and packaging.
- b. If the price according to the agreement reached does not include packaging, and the remuneration for packaging (which is not provided on loan only) is not expressly specified, it will be charged at the demonstrable cost price. At our request, the Supplier shall take back the packaging at its own expense.

- c. Insofar as the delivery costs are to be borne by ST, the delivery shall be shipped by the Supplier at the lowest possible cost in each case. Extra costs for accelerated delivery necessary to meet the delivery deadline shall be borne by the Supplier.
- d. If no prices are indicated in the order, the Supplier's current list prices with standard commercial discounts shall apply. The type of pricing shall not affect the agreement regarding the place of performance.

#### **4. Subcontractors**

- a. The use of subcontractors to perform services is not permitted without the written consent of ST (except the use of transport persons). Should the Supplier violate the above condition, ST is entitled to withdraw from the contract in whole or in part and to demand compensation for damages.
- b. The requirements in the procurement documents that ensue from the contractual arrangements between ST and the Supplier are to be passed on to any permitted subcontractors according to section 4.a. but only if and to the extent absolutely necessary so that the subcontractor may provide the services in question. In other respects, section 7 applies.

#### **5. Provided materials**

- a. Provided materials remain the property of ST and shall be stored separately free of charge, labelled accordingly, administered and set aside. Use of such material is only permitted for ST's orders. The Supplier shall provide compensation in case of loss or a loss of value.
- b. Processing, intermingling or combining (further processing) of the provided materials is carried out by the Supplier on our behalf. The same applies to the further processing of the supplied goods by us so that we will be considered the manufacturer and acquire ownership of the product according to the statutory provisions at the latest after further processing.
- c. Tools, forms, samples, models, profiles, drawings, standard specification sheets and printing templates that have been provided by ST (and the articles manufactured accordingly) may neither be passed on to third parties nor to be used for other purposes than those contractually agreed without ST's written consent. They are to be kept safe free of charge, protected against unauthorized inspection or use and maintained. Reserving further rights for ST, ST can demand the surrender of the abovenamed articles if the Supplier breaches its duties according to the above sentence.

#### **6. Packaging**

The goods shall be packaged in such way as transport damages are to be avoided. Packaging material shall only be used to the extent that is necessary to achieve this purpose. Only environmentally-friendly packaging materials may be used. The Supplier's obligation to take back packaging is based on the statutory provisions.

#### **7. Confidentiality**

- a. The Parties agree that the Supplier shall maintain secrecy regarding Confidential Information and may not disclose Confidential Information to third parties. "**Confidential Information**" means all information and documents belonging to ST that are marked confidential or that must be considered confidential under the circumstances (e.g. – without being limited to – the articles named in item 5.c.), especially information on ST's business operations, business relations and knowhow. The existence of the contract between ST and the Supplier as well as the content of the respective contract is also considered Confidential Information.
- b. Exempt from the obligations in section 7.a. is Confidential Information that
  - aa) was demonstrably already known to the Supplier at the time of the conclusion of the contract or that was passed on to the Supplier afterwards by a third source without a duty to secrecy, statutory provisions or order by public authority being violated thereby;
  - bb) was public knowledge at the time of conclusion of the contract or later became public knowledge, if this is not based on a breach of this contract; and/or

- cc) must be disclosed due to statutory obligations or an order by a court or a public authority. Insofar as is permissible and possible, the Supplier will inform ST beforehand and give the opportunity to take measures to prevent the disclosure.
- c. The Supplier shall only provide Confidential Information to those employees and subcontractors (as permitted per section 4.a.) who need to know respective information in order to perform this contract. The Supplier will also impose a confidentiality obligation on these employees and subcontractors which essentially corresponds in scope and requirements to this section 7 and which remains valid after they leave or finish their task to the extent that is legally permissible.
- d. The above provisions of this section 7 continue to apply even after the end of the (respective) contract with the Supplier for a period of a further 5 years.

## **8. Alterations clause and correctional effort for incorrect documents**

- a. ST can request alterations to the delivered articles or the agreed performances from the Supplier even after conclusion of the contract under the conditions stipulated in section 2.b.
- b. The Supplier must notify ST regarding alterations of the product and/or process definition in writing without delay. Alterations require ST's written approval. Relocations of production are also considered alterations to the process definition.
- c. In case of deviations from the agreed product properties, generally a written approval of delivery should be obtained from ST before dispatch. If products have already been delivered that could be affected by the deviation, the Supplier shall inform ST immediately. The further procedure (e.g. granting and handling special approvals, labelling affected products) will then be jointly determined by ST and the Supplier.

## **9. Delivery**

- a. The DDP clause (Incoterms 2020) applies. The place of delivery is determined according to our order or our confirmation of commission if not agreed otherwise.
- b. The place of delivery is the place of performance. In case the place of delivery has not been expressly agreed for the individual case, the place of delivery shall be ST's location in Schüttof, Germany (Niedersachsenstraße 2, 48465 Schüttof). The risk of accidental destruction and accidental deterioration of the goods as well as the ownership of the goods pass to ST with handover at the place of performance unless otherwise agreed in the following.
- c. Deliveries that are manufactured, rendered or produced specially for ST must be accepted by ST. The risk passes to ST with acceptance.
- d. Every Delivery shall be accompanied by a delivery note.
- e. The agreed delivery dates are binding. Whether the delivery date has been observed is determined by the time of receipt of the goods at the agreed place of delivery.
- f. If it becomes apparent to the Supplier that an agreed date cannot be observed for whatever reason, he shall inform ST thereof without delay and provide reasons for and the expected duration of the delay in writing.
- g. The Supplier is obligated to compensate ST for all direct and indirect damages due to delay that the Supplier is responsible for.
- h. If the agreed delivery date cannot be observed due to circumstances that the Supplier is responsible for and after a reasonable grace period set by ST has expired without effect, ST shall be entitled to demand compensation for damages for non-performance or to procure a replacement from a third party (cost-neutral for ST) or to withdraw from the contract (ST's choice).
- i. The Supplier can only invoke the provision of necessary documents and information by ST if they have requested the corresponding documents from ST in writing and have not received them within a reasonable period.
- j. In case of delivery before the agreed delivery date, ST reserves the right to return the delivery at the Supplier's expense. If a premature delivery is not returned, the goods will be stored until the delivery date by ST at the

Supplier's expense and risk. In case of premature delivery, ST reserves the right to pay for the Delivery at the time when the corresponding payment would have been due if the delivery had been on time.

- k. ST only accepts partial deliveries if expressly agreed. In case of agreed partial shipments, the remaining quantity shall be indicated in the delivery documentation.

#### **10. Payments, invoices**

- a. Payment to the Supplier is made within 60 calendar days (net) after the transfer of risk to ST or receipt of a correct and verifiable invoice, whichever occurs later. If ST pays within 14 days after the receipt of a correct and verifiable invoice, the Supplier shall grant ST a 3 % early payment discount on the net amount of the corresponding invoice. The timeliness of the payments owed by ST is determined by the time at which the transfer order is received by our bank.
- b. In all confirmations of commission, delivery papers and invoices our order number, the article number, delivery quantity and delivery address shall be indicated. If one or more of these specifications are missing and therefore processing by us within our normal business operations is delayed, the payment period of 60 days as stipulated in section 10.a. will be extended by the period of delay.
- c. Insofar as attestations on material testing, factory certificates or similar have been agreed, they are considered an essential component of the Delivery and shall be sent to ST together with the Delivery.
- d. Payments do not imply that the Delivery has been approved as meeting contract requirements.

#### **11. Contractual penalty (penalty fee)**

- a. If a specific date is not named, the latest possible delivery date shall be considered Friday, 12:00 p.m. of the designated calendar week.
- b. Following a prior written warning notice to the Supplier, ST is entitled to demand a contractual penalty (penalty fee) of 0.5 % of the order value per calendar week from the Supplier while he is in default.
- c. The total amount of the penalty fee is limited to a maximum of 10% of the respective total order value. Even if ST accepts belated deliveries by the Supplier, ST can demand the penalty fee.
- d. The contractual penalty neither releases the Supplier from its delivery and/or performance obligations nor does it preclude claims for damages by ST or reduce these.
- e. The penalty fee will be invoiced by ST directly as a debit note.

#### **12. Retention of title**

Retentions of title by the Supplier apply only insofar as they refer to our payment obligation for the respective product for which the Supplier retains the title. Prolonged or extended retentions of title are not permitted and are expressly rejected by us.

#### **13. Technical properties**

- a. The technical properties disclosed in data sheets, specifications, technical information sheets or similar are considered contractually guaranteed properties of the delivery object.
- b. The Supplier is obligated to comply with prohibitions and restrictions of substances according to the current statutory provisions.

#### **14. Technical documentation**

Together with the Delivery, the Supplier will also provide ST with the respective documentation on the delivery object free of charge. This includes:

- scale drawings and complete technical data (2 copies)

- assembly, operation and maintenance instructions
- spare part lists and drawings
- test protocols and factory certificates.

The corresponding documents are to be provided to ST electronically.

## 15. Claims for defects, product liability

- a. Unless specified otherwise in the following, the statutory provisions governing our rights in case of material and legal defects (including delivery of the wrong article or a lesser quantity of articles as well as incorrect assembly, defective assembly, operation or operating instructions) and other breaches of duty by the Supplier shall apply.
- b. According to the statutory provisions, the Supplier is especially liable for ensuring that the object of delivery has the agreed quality at the time of transfer of risk. Those product descriptions that have been made subject of the respective contract – especially by being named or referenced in our order – or that have been included in the contract in the same way as these GTP will be considered agreements on quality. In this respect, it is irrelevant whether the product description originates with us, the Supplier or the manufacturer. The warranty period is 36 months and begins with the transfer of risk.
- c. Notwithstanding § 442 (1) sentence 2 German Civil Code (BGB), we shall have unrestricted claims for defects even if the defect was unknown at the time of conclusion of this contract due to gross negligence.
- d. The statutory provisions (§§ 377, 381 German Commercial Code (HGB)) regarding the commercial duty to examine and make complaint of defects apply under the following condition: Our duty to examine is limited to defects manifest during external appraisal in our incoming goods inspection including the delivery documents (e.g. transport damages, wrong delivery and delivery of a lesser quantity) or that can be recognized during a random quality inspection. Insofar as acceptance has been agreed, a duty to examine does not apply. Otherwise, it depends on to what extent an examination is feasible considering the individual circumstances in the proper course of business. Our duty to make complaint of defects that are discovered later remains unaffected. Regardless of our duty to examine, our complaint (defect notice) shall certainly be considered in time and without undue delay if it has been sent within ten working days after discovery or, in case of obvious defects, after delivery.
- e. If the Supplier does not fulfill its duty to provide supplementary performance – according to our choice: by removing the defect (rectification) or by delivering a defect-free article (replacement delivery) – within a reasonable period of grace set by us, we can remove the defect ourselves and demand compensation from the Supplier for the necessary expenses or demand a corresponding advance. If the supplementary performance by the Supplier has failed or unreasonably to us (e.g. due to particular urgency, endangerment of operational safety or impending disproportionate damages), we are not required to set a grace period. We will inform the Supplier without delay – beforehand if possible – of such circumstances.
- f. The dismantling of the defective goods and the renewed installation of the goods (if the intended purpose of the goods is to be installed into another object) are part of the supplementary performance. The costs incurred by the Supplier for examination and supplementary performance (including any dismantling and installation costs) shall be borne by the Supplier even if it turns out that there was no defect. Our liability for damages in case of unjustified demands for remedy of defects remain unaffected. However, we are only liable if we recognized or failed to recognize for reasons of gross negligence that there was no defect.
- g. Besides, we are entitled to reduce the purchase price or withdraw from the contract in case of material or legal defect according to the statutory provisions. We also have a claim for compensation of damages and reimbursement of expenses according to the statutory provisions.
- h. If the Supplier is responsible for product damages, he shall indemnify us with regard to claims by third parties insofar as the cause is within their sphere of control and organization and he himself is liable in the relation to third parties. In the scope of its indemnification duty, the Supplier shall also reimburse expenses according to §§ 683, 670 BGB that ensue from or in connection with claims made against us by third parties including any product recalls conducted by us. As far as is possible and can reasonably be expected, we will inform the Supplier about the content and extent of recall measures taken and provide him with the opportunity to comment. The Supplier shall take out and maintain a product liability insurance policy with a lump-sum coverage of at least 10 million euros per case of personal injury or property damage. ST's statutory rights and claims remain unaffected by the above provisions.
- i. The Supplier guarantees that all Deliveries are in accordance with the latest state of the art, the applicable legal provisions and the requirements and guidelines of public authorities, employers' liability insurance associations as

well as professional associations. If deviations from these regulations are necessary in the individual case, the Supplier must obtain ST's corresponding consent. The Supplier's warranty obligation is not limited by this consent. If the Supplier has concerns about the mode of execution requested by ST, the Supplier shall inform ST thereof without delay in writing.

- j. The Supplier undertakes to use environmentally friendly products and processes for its Deliveries and also for supplies or ancillary services provided by third parties as far as is economically and legally possible. The Supplier is liable for the environmental compatibility of the delivered products and packaging materials and for all consequential damages that ensue due to a violation of its statutory waste disposal duties.

## **16. Spare parts**

- a. The Supplier is obligated to provide spare parts for the products delivered to us for a period of at least 30 years after delivery.
- b. If the Supplier intends to cease production of spare parts for the products delivered to us, they will inform us about the production stop as soon as the decision has been made. This decision must be made, subject to the provision in section 16.a., at least 9 months before production is stopped. If the Supplier stops delivering spare parts after the expiry of the abovenamed period, ST shall receive an opportunity to place a last order and the corresponding manufacturing documents shall be provided to ST free of charge.

## **17. Right of access**

Upon appointment, the Supplier shall allow ST access to all facilities involved in the order and all associated records. ST may carry out the inspection on the Supplier's premises during its usual business hours or have the inspection carried out by third parties who have been sworn to secrecy. ST will ensure that the Supplier's business operations will be disturbed as little as possible by its activities on the premises.

## **18. Property rights**

- a. The Supplier guarantees that all Deliveries are free of third-party property rights. The Supplier also guarantees that the Delivery and the use of the delivered articles/services does not infringe on patents, licenses, copyrights or other property rights belonging to third parties.
- b. The Supplier indemnifies ST and its customers against claims by third parties arising from any property right infringements that the Supplier is responsible for and bears all costs incurred by ST in this connection.
- c. ST is entitled to bring about the rights holder's permission to use the delivery objects and services concerned at the Supplier's expense.

## **19. Export regulations**

- a. The Supplier ensures that the applicable export laws are not violated by the agreed Delivery. The Supplier indemnifies ST regarding related claims against ST made by third parties.
- b. The Supplier shall inform ST whether and to what extent the goods to be delivered by the Supplier are subject to an export license.

## **20. Miscellaneous**

- a. Amendments or additions to the contract (including this clause) require a written agreement by the Parties.
- b. The Supplier is only permitted to set off its counterclaims if the counterclaims have been established as legally binding by a court, are not disputed or are recognized by ST. The Supplier is also (only) entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship, its counterclaims are not disputed, recognized or established as legally binding.
- c. Solely the law of the Federal Republic of Germany applies under exclusion of (i) the United Nations Convention on Contracts for the International Sale of Goods and (ii) the legal norms that invoke another legal order.

- d. Exclusive place of court jurisdiction for all disputes arising from or in connection with the contract is Osnabrück, Germany.
- e. Should individual provisions in the contract be or become invalid, the validity of the contract will remain otherwise unaffected. The invalid provision shall then be replaced by a regulation that comes as close as possible to the economic purpose intended by the Parties. The same applies in case the contract contains contractual gaps.

\*\*\*