

## **General Conditions of Purchase**

of SML Maschinengesellschaft mbH  
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### **1. Scope of validity:**

- 1.1. These General Conditions of Purchase (hereinafter called “GCP“) stipulated by SML Maschinengesellschaft GmbH (hereinafter called the “Buyer“) shall be exclusively applicable, unless explicitly agreed otherwise in writing. Subsidiary agreements, supplements or amendments to these GCP must be made in writing, the same shall apply to any other deviations from these.
- 1.2. Any terms and conditions which may be contrary to or deviating from the Buyer’s GCP shall have no validity, not even if the Buyer does not expressly object to such deviating terms and conditions. Equally, deviating terms and conditions of the supplier shall have no validity, not even if the supplier makes reference to his own terms and conditions which expressly imply the validity of such terms and conditions. Along these lines in particular acts of fulfilment of the supplier’s terms and conditions on behalf of the Buyer shall not be construed as an approval of the supplier’s terms and conditions which deviate from these GCP.
- 1.3. In the event that any individual provision or any part of a provision of these GCP is or becomes ineffective, either in whole or in part, the remaining provisions of these GCP shall continue in effect. In such an event, the supplier shall, with the consent of the Buyer, replace such an ineffective provision by another legally admissible provision which serves the economic purpose of the ineffective provision as closely as possible.
- 1.4. Both the Buyer and the supplier are companies within the meaning of section 1 para 1 number 1 KSchG (“Austrian Customer Protection Act”).
- 1.5. The contractual, ordering and business language shall be German.
- 1.6. For the purpose of better readability, no gender-specific differentiation is made. This is done without any intention of discrimination.

### **2. Offer:**

- 2.1. Offers shall be made on the basis of the inquiry. Deviations from the inquiry and/or alternative offers shall be expressly pointed out as such.
- 2.2. Expenses incurred in the preparation of an offer shall not be reimbursed.
- 2.3. Tender documents and project specifications including any annexes and samples, dimensioned drawings and descriptions and the like shall remain the sole property of the Buyer; such documentation shall not be disclosed to third parties without the express written consent of the Buyer. Furthermore, these shall be exclusively used for the preparation of the offer and shall be returned without further request in case no order is placed.
- 2.4. The offer made by the supplier shall be binding for the period of six months from receipt thereof by the Buyer.

### **3. Orders:**

3.1. Orders shall be confirmed in writing by the supplier on an order copy.

If orders are not confirmed within 14 days, such orders shall be deemed confirmed.

3.2. The price quoted in the order is a fixed price and shall be binding. Within the European Union, prices shall be quoted in Euro, outside the European Union prices shall be quoted in USD unless there are agreements to the contrary. In case of price fluctuations resulting in an upward revaluation of the agreed currency with respect to the Euro and exceeding 3% between the order date and the time limit for payment, the Buyer shall have the right to carry out a monetary correction of the price.

3.3. In the absence of a specific written provision to the contrary, the price is based on the agreement "delivered duty paid" and includes delivery "free domicile" including packaging. The legal sales tax is not included in the price unless the order specifically provides otherwise.

In particular, the Incoterms 2020 of the International Chamber of Commerce shall apply.

### **4. Maturity Dates and Terms of Payment:**

4.1. The supplier agrees to submit to the Buyer an invoice which is in conformity with the Buyer's sales tax law indicating and itemizing in detail all the goods delivered and services rendered. The original invoice shall in no event be enclosed with the delivery. Furthermore, the purchase order number must be indicated on the invoices.

4.2. The Buyer herewith agrees not to accept the supplier's invoice unless the delivery of the goods is complete and following fulfilment of all the contractual obligations as set forth with respect to the preparation of the invoice.

4.3. In the event that invoices have to be returned (e.g. delivery not in order, purchase order number missing), the period of payment shall not commence until receipt of a duly made out invoice.

4.4. Unless there is a separate agreement, supplier's invoices shall become due for payment within 30 days of receipt of the invoice made out in conformity with the above provisions granting a 3% discount or net payment after 45 days.

### **5. Delivery Dates:**

5.1. The delivery date indicated in the order shall be binding. In case of doubt, a fixed transaction within the meaning of section 919 ABGB shall be assumed. Non-compliance with delivery dates is construed as non-fulfilment with all the legal consequences arising from such a non-fulfilment.

5.2. In the event of delays in delivery, as compared to the delivery date fixed in the order, the supplier agrees to notify the Buyer in writing as soon as any circumstances occur or become evident from which it can be concluded that the contractual delivery date cannot be complied with. The supplier shall state the grounds thereof as well as the anticipated duration of such a delay.

- 5.3. Premature deliveries are not permitted unless mutually agreed upon. In such a case the Buyer reserves the right to claim any costs in connection with the taking over of the delivery (e.g. storage costs, return of merchandise etc.). Notwithstanding any other provisions in connection with the making out of an invoice, invoices cannot be made out prior to the delivery date and taking over of the goods as indicated in the order.
- 5.4. If the Buyer is not ready for acceptance of the delivery at the agreed delivery date, he shall notify the supplier thereof in due time, in any case no later than 7 days prior to the delivery date. In this case, the delivery date shall be postponed for the duration of the justified postponement of delivery acceptance by the Buyer. If notification of the impossibility to accept the delivery is done in due time, no claims can be raised by the supplier due to such changes in the delivery date.
- 5.5. If the delivery date according to the order is exceeded, the customer has the right to withdraw without further notice from this order without any obligations, subject to a reasonable period of notice. Advance payments already made shall be refunded to the customer immediately after receipt of the declaration of withdrawal.
- 5.6. Penalty agreements can be asserted by the client up to the final invoice, even if we do not expressly reserve the right to do so when accepting the delayed delivery.
- 5.7. If insolvency proceedings are opened against the supplier or if insolvency is imminent, the purchaser is entitled to withdraw from the orders with immediate effect and without any obligations, with reference to the duty of commercial diligence. Furthermore, all deposits are to be returned immediately.

## **6. Warranties and Liability:**

- 6.1. The Buyer is not obliged to lodge an immediate complaint, Section 377 UGB (Commercial Code) is not applicable. Transportation shall be at the supplier's risk and cost.
- 6.2. The supplier guarantees - without prejudice to statutory warranty claims - the perfect condition of the delivery for a guarantee period of 2 years following the orderly delivery free of any defects, or 12 months (anticipated use 24 hours per day) following acceptance by our customer, whichever term may be longer.
- 6.3. The supplier agrees to supply exclusively state of the art goods which also reflect the current state of scientific knowledge, and which in any case comply with the technical standards, in particular the existing Austrian standards, provided that these exist, or DIN standards. The supplier shall draw the Buyer's attention to any risks that may occur in connection with the normal use of the product.
- 6.4. Notwithstanding any legal provision, the Buyer shall have the right to request from the supplier at his discretion either a remedy of the defects, a substitute delivery or eventually a price reduction or conversion ("Wandlung"). The supplier agrees to bear any costs arising from such necessary remedy of defects or substitute delivery and, upon request by the Buyer, the supplier will place at the Buyer's disposal free of charge and until remedy of defects or effected replacement, a substitute technical machinery or equipment. As provided for in this agreement, the supplier is liable for any prejudice or damage which the Buyer might incur due to a possible deficiency in the delivery. In particular, he shall also be liable for possible consequential damage or loss.
- 6.5. In the event of any defects of whatever nature, the Buyer shall in any case have the right to retain the entire outstanding purchase price or works compensation until the remedy of the defects is completed.

- 6.6. The approval by the Buyer of drawings and calculations made by the supplier shall in no way imply a secondary liability on behalf of the Buyer, and the supplier herewith waives any right to claim a joint responsibility from such approval by the Buyer.
- 6.7. In urgent cases (e.g. operational failure on Sundays/holidays) or in case of default on the part of the supplier to either carry out the requested remedy of defects or to provide for a proper substitute delivery, the Buyer shall have the right to remedy the defects himself or have them remedied by third parties at the supplier's cost or provide for replacement thereof in any other way.
- 6.8. Payments made shall not be construed as acceptance of a proper delivery. Provided that the remedy of defects is possible at the Buyer's site, the Buyer may request such remedy without having to pay any additional compensation to the supplier.
- 6.9. In the event of any disputes between the Buyer and the supplier with regard to the fact whether or not there is a defect and/or with regard to the necessity and the extent of the repairs that need to be carried out by the Buyer, the expert opinion of the Vienna TÜV (Technical Control Board) shall be binding for both the Buyer and the supplier. The costs thereof shall be borne by the party whose expert opinion turns out to be negative.
- 6.10. In deviation from the provision of section 924 ABGB, the supplier shall bear the burden of proof during the entire warranty period that the item was not already defective at the time of handover.
- 6.11. In addition to the provision of section 1298 ABGB, the supplier shall also bear the burden of proof that he - or one of his vicarious agents - is not slightly at fault.

## **7. Industrial Property Rights:**

Supplier guarantees that in connection with a delivery no rights thereunder of third parties, in particular industrial property rights, are infringed. The supplier shall at first request completely indemnify and hold harmless the Buyer from any claims raised by third parties. Unless provided to the contrary, upon delivery or service done and performed in conformity with the order, all rights, including patent, trademark and copyrights, in particular the right of use with regard to the delivery or contractual performance, are assigned to the Buyer free of any additional charge.

## **8. Provision of Tools, Technical Equipment, Detailed Drawings:**

- 8.1. The Buyer reserves the right of ownership with regard to the technical equipment placed at disposal; the supplier agrees to use such technical equipment exclusively for the production of the goods ordered by the Buyer. The supplier agrees to carry out free of charge and in due time all the maintenance and inspection works as well as all the repair and post-repair works that may become necessary with regard to the Buyer's technical equipment. He shall promptly notify the Buyer of any failures; should he negligently fail to do so, claim for damages shall continue in effect.
- 8.2. The models, drawings, samples, calibers, stereotypes and other documentation placed at disposal shall remain the ownership of the Buyer and, unless provided to the contrary, shall be returned promptly upon completion of the work. They shall be marked as the property of the Buyer and shall be treated confidentially.
- 8.3. Moreover, all the data, information, drawings and the like, which have been made available to the supplier by the Buyer for the purpose of producing the subject of agreement, shall be treated confidentially, and any drawings produced by the supplier in connection with the requested performance may not be used except to

the extent necessary for the execution of the contractual performance. No copying or disclosing to third parties is allowed.

The documentation shall be returned to the Buyer upon completion of the order.

All the information indicated above shall be deemed as business secrets and treated confidentially within the meaning of section 26b para 1 number 3 UWG ("Austrian Law Against Unfair Competition").

8.4. The supplier shall be liable for any damage and disadvantages which the Buyer might incur due to a breach of the provisions as set forth in this clause, and such liability shall also include any of his sub-contractors or employees and representatives.

8.5. The supplier undertakes to make available electronic working drawings, no later than 2 weeks after the order date.

### **9. Sub-Contracting:**

The sub-contracting of orders or essential parts thereof is subject to the written consent of the Buyer. A consent given by the Buyer to sub-contract orders shall not release the supplier from his legal responsibility, in particular his responsibility in accordance with Section 1313a of the ABGB (Austrian Civil Code).

### **10. Spare Parts:**

10.1. The supplier herewith accepts that his delivery is the object or purpose of deliveries made by the Buyer to third parties.

10.2. The supplier agrees to refrain from selling any spare parts to the Buyer's customer and agrees to communicate to the Buyer any inquiries regarding such spare parts

10.3. The spare parts required by the Buyer's customers shall not be consigned by the supplier to anyone else but the Buyer.

10.4. Any of such spare parts purchased by the Buyer are subject to a producer-specific quality control.

### **11. Advertising:**

11.1. Any advertising activity carried out by the supplier on the basis of the business relations existing between the Buyer and the supplier (including any disclosing als reference customer) shall require the prior written consent of the Buyer.

11.2. The supplier agrees that he will not affix any advertising labels and logos on the delivered goods and further agrees to reduce the manufacturer's nameplates to a minimum. The same shall apply to the documentation placed at disposal.

### **12. Production Control:**

The supplier herewith grants the right to the Buyer to carry out routine inspections during the production of the ordered delivery. The Buyer shall have the right even during the production process to refuse acceptance of noticeably defective parts, and the supplier herewith agrees to produce other parts instead of the defective ones. Such routine inspections, however, shall in no way imply a joint responsibility on the part of the Buyer nor will they release the supplier from his sole responsibility for the due and proper delivery.

### **13. Packaging:**

Packing and packaging etc. shall not pass over into the Buyer's ownership unless upon his request. If the Buyer fails to express such an intention, packaging material

is returned at the supplier's risk and cost. In case special expenses are incurred in connection with the disposal of packaging, the supplier shall be liable for reimbursement thereof to the Buyer.

#### **14. Shipments:**

- 14.1. In the absence of a specific written provision in the agreement, shipments shall be effected in accordance with the clause "delivery duty paid" of the Incoterms 2020, issued by the International Chamber of Commerce, and the place of destination will be communicated to the supplier by the Buyer for every single delivery.
- 14.2. On all written communications, forwarding advices, shipping documents, invoices, etc., the supplier shall quote the purchase order number, the department, the ref.no. and the date of the order; in shipping documents the supplier shall also quote the place of discharge. All the deliveries must be accompanied by delivery notes indicating and confirming the country or origin of the individual goods. For shipments from the EU, the weight of the individual parts must be specified on the delivery notes. In the entire correspondence, every single order is to be treated individually.
- 14.3. For every single consignment the supplier shall, on the day the goods are shipped and regardless of the type of dispatch, announce the shipment.
- 14.4. For sea transportation, the shipping company and the name of the ship must be specified in the forwarding advice. For shipments from overseas, a ready-for-shipment note must be sent per telex to the Buyer on the day of shipment. A copy of the relevant bill of lading must be sent to the Buyer immediately following shipment.
- 14.5. The supplier shall be liable for the accuracy and the completeness of the particulars specified in the movement certificate as well as for the compliance with any requirements as may be imposed by the customs authorities.
- 14.6. Notwithstanding the obligation of the supplier to deliver the goods at his own cost and risk, when shipping dangerous goods, the supplier agrees to maintain the international safety standards for the transportation of such dangerous goods, as set forth in the relevant European or international agreements for the respective means of transportation. The same shall also apply, if the Buyer and supplier have made an agreement deviating from clause 14.1.
- 14.7. The customer shall be provided with complete documentation in electronic and paper form, spare parts lists with price information as well as assembly and commissioning instructions in due time prior to delivery.
- 14.8. The supplier agrees to urge possible sub-contractors to quote in all the documents the particulars as specified in clause 14.2., as well as the name of the sub-contractor's client.
- 14.9. In the event that the supplier, or any of his assistants or agents, should breach the provisions of this clause, the Buyer shall have the right notwithstanding other rights contained herein to refuse acceptance of the performance. The supplier shall be liable for any costs incurred by the Buyer, in particular for track storage charges, marshalling costs, redirection costs attributable to false addressing, re-storage and other costs. Deliveries which cannot be accepted for any of the above reasons, will be stored at the supplier's cost and risk until all the documents are duly submitted and delivery can be carried out and completed.

#### **15. General:**

- 15.1. All contracts between the Buyer and the Supplier shall be governed by Austrian law to the exclusion of the standards of the International Private Law Act (IPRG) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11. April 1980, BGBl. 1988/96.
- 15.2. The place of performance and delivery is Gewerbepark Ost 32, 4846 Redlham or the place which is stated in our purchase order.
- 15.3. The parties to this contract agree that the competent court at the incorporated business seat of the Buyer shall be the venue and shall have jurisdiction as to the subject matter; however, the Buyer shall have the right at his discretion to institute legal proceedings in any other court authority, provided another venue is stipulated.
- 15.4. The supplier agrees to communicate to the Buyer any and all of the statistical information about the exchange of goods between the member states of the European Union (Intrastat). In the event that any of these essential particulars are missing, the delivery shall be deemed as incomplete and, as a consequence, payment of the invoice will be stopped.
- 15.5. The supplier agrees to submit to the Buyer, once a year and without being asked, a valid long-term supplier declaration pursuant to VO (EWG) No. 3351/83 (EEC regulation) quoting the material number and the relevant code number (product classification foreign trade statistics)
- 15.6. In the event of any contradiction or other diverging interpretation between the German and any other foreign language version of these Conditions of Purchase, the German version shall exclusively prevail and be binding. For this reason, the German version alone shall be used for the construction and interpretation of these General Conditions of Purchase.
- 15.7. Moreover, we would like to point out that the supplier agrees to inform us immediately of any delivered goods for which a trade embargo exists with regard to their country of origin. Authoritative information in relation to any provisions, is provided by the Federal Ministry for the Economy and Labour.

**Information requirements according to § 14 UGB:**

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