

General Terms and Conditions of Purchase

SMH Süddeutsche Metallhandelsgesellschaft mbH

as of 03/2018

1. Deviating Terms and Conditions; Acknowledgement of Standard Terms of Retention of Title

1.1. By accepting our order the Supplier declares its consent with these General Terms and Conditions of Purchase. Our General Terms and Conditions of Purchase shall also solely be applicable in case our order is confirmed by the Supplier in deviation to our Conditions, even if we do not explicitly contradict. Thus, deviations to our Conditions shall be valid only if they are explicitly confirmed by us in writing. If the Supplier does not approve of the above handling, he has to immediately and expressly notify us thereof by separate letter. In this case we reserve the right to rescind the order. Our Conditions shall be applicable to future orders even if no explicit reference is made thereto.

1.2. However, we approve of a (simple) retention of title clause by way of which the Supplier reserves the ownership in a specific merchandise delivered by it until complete payment of this merchandise. We equally approve of an (extended) reservation of title clause, by means of which the Supplier's grants its approval to a processing, mixing and/or combination of the delivered items or to their resale on condition that the Supplier is granted an appropriate share in the ownership of the new object respectively, in case of resale, an appropriate share in our payment claim against our customer.

2. Parol Evidence

Unless a different form requirement has been agreed upon, both orders as well as their modification(s) shall be/become effective only when placed or subsequently confirmed by the Recipient in text form. Orders placed orally as well as modifications thereto shall become effective only upon their being confirmed by us in text form.

3. Documents

The Recipient reserves title to all and any drawings, samples and specifications made available to the Supplier in the course of the business relationship. Such documentation may neither be made accessible by the Supplier to any third party nor may it be used or copied for any purpose other than the execution of the pertinent orders.

4. Prices and Payment

4.1. The basis for payment shall always be the amount (weight as determined in the weight bridge ticket issued by the calibrated scales at the place of delivery specified by us) actually received by the Recipient.

4.2. Prices shall always be quoted net of VAT (sales tax). They are fix and free the agreed destination exclusive of packing. Costs for packing shall be payable extra only upon specific agreement to that effect.

4.3. Unless otherwise specifically agreed upon, payment shall be made net within 30 days after receipt and testing of the delivered material and receipt of a proper invoice.

5. Assignment of Claims

The Supplier shall not without the prior written consent of the Recipient assign any claim against the Recipient to a third party.

6. Deviations Between the Quantity Ordered and the Quantity Received

6.1. Agreed delivery dates and periods are binding. Relevant for judging compliance with the delivery date or period is the receipt of the merchandise by us. Unless otherwise expressly agreed, delivery shall be effected DDP (INCOTERMS 2010 respectively the latest INCOTERMS version applicable at the time of conclusion of contract) to the delivery address / unloading sites indicated by us. If the Supplier foresees difficulties with regard to the supply with primary materials, in manufacture or similar circumstances which may prevent it from timely delivery, the Supplier shall immediately notify our purchasing department. Notwithstanding such a notification, the legal provisions shall apply in case of non-observance of agreed delivery dates.

6.2. Deviations between the quantity (measured by weight, see above) ordered and the quantity actually received by the Recipient are acceptable within the following limits:

- If the amount ordered is smaller than 10.000 kg 100 kg
- If the amount ordered is between 10.000 kg and 300.000 kg 1%
- if the amount ordered exceeds 300.000 kg 3.000 kg

6.3. In case the Supplier delivers less than the minimum stipulated above, the Recipient shall be entitled to accept it as conformant or to demand supplementary delivery of the lacking amount (difference between the amount ordered and the amount delivered).

If the amount actually delivered exceeds the acceptable limit as stipulated above, the Recipient must accept at least the agreed-upon amount. The exceeding amount shall be negotiated, but, on pertinent request by the Recipient, it shall be taken back by the Supplier at his own cost.

7. Reduced Incoming Inspection; Notice of Defects

We are obligated to carry out incoming inspection in terms of § 377 HGB (German Commercial Code) only with respect to the identity of the merchandise delivered, the quantity as well as with regard to obvious transport and packing damage visible on the outside of the merchandise. If a defect is found, it has to be notified by us in text form within 8 working days from discovery, at the latest. This deadline is also deemed to be met if, at the last day of the deadline, we send the notification of defect or a registered letter to the Supplier. Defects not identified within the framework of such an incoming inspection do not release the Supplier from its responsibility for hidden defects that become apparent only upon processing or later use of the merchandise. Hidden defects have to be notified by us within 8 working days from their discovery or from gaining knowledge thereof.

8. Warranty and Liability

8.1. If a testing sample drawn by the Recipient contains substances which are either unlawful or inappropriate for the use to which the Supplier knows the Recipient will put the material in question, or if such material either contains more of certain substances than the maximum amount permitted or less than the minimum amount prescribed, or if such sample fails in any other way to conform to the agreed-upon or otherwise pertinent specifications, then such sample shall be considered defective. It shall be upon the Supplier to inform himself of the intended use of the material delivered.

8.2. If at least two independently drawn samples are defective within the meaning stipulated above, or if any one such sample contains either traces of cadmium or of asbestos or any material/ingredients suspect either to be radioactive or explosive, the Recipient shall be entitled to treat the entire delivery from which such sample(s) were taken, as defective.

8.3. If, in case of clause 8.2, the Recipient decides to treat the entire delivery as defective, he shall have the following options with regard to the delivery in question: he can either put the entire delivery at the ready for the Supplier for pick-up or he may keep it and reduce the purchase price appropriately. If he returns the delivery, he shall, again at his option, be entitled to either demand a fully new delivery or to have the purchase price returned in full. In addition, all and any costs arising in connection with either the identification or the repair of any defects (costs for selection tests, transportation costs and the like) shall be fully borne by the Supplier.

8.4. Other legal claims on our part in case of defects shall remain unaffected by the above regulations. In particular, we shall, in addition to the above provisions, be entitled to claim compensation of the damage and costs incurred by us as a result of the defect or invoiced to us by our customers.

9. Provisions

If for the purpose of manufacture of the products to be delivered by the Supplier, we provide the Supplier with metal supplies or scraps (jointly "Scraps"), the following shall apply:

9.1. Refinement made by the Supplier for us shall be carried out in compliance with our instructions and on our behalf as well as in our economic interest in such a way that only we and not the Supplier shall be deemed as manufacturer in terms of § 950 BGB (German Civil Code).

9.2. In case of the initiation of insolvency proceedings regarding the Supplier's assets, the Supplier shall, at our request, at any time furnish us with information regarding the identity of the other customers with a positive balance on the tolling accounts at the time of initiation of such proceedings as well as regarding the amount of such balance.

9.3. At the same time our approval to the processing of the existing Scrap on stock shall expire upon initiation of the insolvency proceedings. In the name of the entire community of customers (§ 744 para. 2 BGB, German Civil Code), we herewith in this case already now prohibit the Supplier the further processing.

9.4. Instead of asserting our claim for separation and surrender of the fraction of the Supplier's total scrap metal inventory that is our property, we may, by corresponding written statement, in whole or in part, declare set-off of our claim against the Supplier's claims. Our claim for surrender of the inventory shall at this point in time be converted into a claim for payment according to § 45 Insolvenzordnung (German Insolvency Code) to the degree set off has been declared.

10. Effect of Duty to Minimize Damage with Regard to the Recipient's Conduct vis-à-vis Third Parties

If claims are made against the Recipient by one or several of its customers which are based on real or alleged defects of the products delivered to such customer(s) by the Recipient which result or are alleged to result from a defect in a component received by the Recipient from the Supplier, the Recipient shall not be required, as part of its general duty to minimize the damage suffered by the Supplier, to defend itself against such claims by relying either on the expiration of such claims or on the failure of such customer properly to make the notification of defects of the incoming goods as set out in § 377 HGB (see above).

11. Offset

The Supplier acknowledges that all orders governed by these Conditions are placed by the Recipient in the fulfilment of existing or future offset obligations of itself or of any other company belonging to the DIEHL group of companies in terms of §§ 15 et seqq. AktG (German Public Companies Act). Upon pertinent request by the Recipient, the Supplier shall confirm this vis-à-vis the competent offset authorities as well as make and receive any declarations and/or perform any acts necessary for this business transaction to be acknowledged as an offset transaction (e.g. fill in any forms and/or make any oral / telephonic confirmations).

12. Compliance

The Supplier shall safeguard that its employees and other persons employed by it / contracted by it within the framework of the business relationship with us refrain from doing anything that might result in a criminal liability of such employees / persons on grounds of fraud or embezzlement, bribery, corruption or other corruption offences or offences against free competition and shall in every respect encourage a law-abiding conduct of its employees / other persons contracted. In case of a violation of the above mentioned obligation, we shall, after having warned the Supplier and unsuccessful expiration of a reasonable deadline for remedial action, within 2 weeks from unsuccessful expiration of such deadline, be entitled to extraordinarily terminate individual or all business transactions with the Supplier and to break off individual or all negotiations. The prior warning and granting of a deadline is dispensable under special circumstances which, weighing the mutual interests of the parties, justify immediate termination; in this case the extraordinary termination can be declared by us within 2 weeks from our gaining knowledge of the violation. Notwithstanding the foregoing, the Supplier is obligated to observe all laws, official and other regulations applicable to it and the business relationship with us, as well as the General Business Principles of the Diehl Corporate Group which are published on the website www.diehl.com under „Corporate Compliance“ and are on request made available separately in printed form.

13. Adherence to EU-Regulations / Dodd-Frank Act

For each product the Supplier is in every respect obligated to adhere to the requirements and obligations of the REACH Regulation of the EU (VO (EU) No. 1907/2006 of December 18, 2006), the CLP Regulation of the EU (VO (EU) No. 1272/2008 of December 16, 2008) and the RoHS Regulation of the EU (RL 2002/95/EU of January 27, 2003) as amended from time to time (including the respective alterations and amendments to these acts of law and, insofar as already effected, their transformation/implementation into national law by the EU member states). At our pertinent request, the Supplier shall issue corresponding written product-specific declarations of conformity which shall also be valid vis-à-vis our customers and can be passed on to them.

The Supplier is furthermore obligated to promptly and to the best of its knowledge and belief provide all information requested by us or our customers as to whether any so-called conflict minerals from the DR Congo or its neighboring countries are contained in the delivered products in terms of the US-American Dodd-Frank Act and, as the case may be, render any further assistance for the purpose of complying with the Dodd-Frank Act which our customer may request. This shall apply mutatis mutandis insofar and as soon as a comparable set of rules comes into force within the EU.

14. Final Provisions

14.1. Place of Performance

The place of performance for all obligations is the delivery address indicated by us or, in the absence of such address, the business address from where our order was placed or the point of delivery that may have been agreed upon in line with a separately agreed Incoterm (Incoterms 2010 respectively the latest INCOTERMS version applicable at the time of conclusion of contract) deviating from Clause 8.

14.2. Applicable Law and Jurisdiction

a) In case of EU and Norwegian Suppliers:

With regard to Suppliers with a registered seat in the EU, these Terms and Conditions shall exclusively be governed by and construed in all respects

in accordance with German Law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of its conflicts of law. The competent courts of Nuremberg, Germany, shall have exclusive jurisdiction in respect of any dispute, action or claim which may arise out of or in connection with these Terms and Conditions.

b) In case of Non-EU and Non-Norwegian Suppliers:

With regard to Suppliers with a registered seat outside the EU and outside Norway, these Terms and Conditions shall exclusively be governed by and construed in all respects in accordance with Swiss Law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of its conflicts of law. All disputes arising out of or in connection with these Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC). The place of arbitration shall be Zurich, Switzerland. Arbitration shall be held in the English language.

c) In case of Chinese Suppliers:

With regard to Suppliers with a registered seat in the PR China, these Terms and Conditions shall exclusively be governed by the laws of China to the exclusion of the Convention on Contracts for the International Sale of Goods (CISG) and of its conflicts of law. Any dispute arising from or in connection with these Terms and Conditions shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The place of arbitration shall be Beijing, China. The arbitral award is final and binding upon both parties. The arbitration shall be held in the English language.