

## Section 1 General – Area of Application - Conclusion of Contract

- (1) The present Terms of Purchase apply to all business relationships between Stettler Kunststofftechnik GmbH & Co. KG – hereinafter also referred to as 'Purchaser' for short – and the contractor – both hereinafter collectively referred to as 'Parties to the Contract'. These Terms of Purchase only apply to businesses as defined in Section 14 of the German Civil Code (§ 14 BGB). Therefore, 'Contractors' within the meaning of our Terms of Purchase are exclusively natural persons or legal entities or incorporated partnerships acting in a corporate capacity or in a capacity as self-employed professionals.
- (2) Our Terms of Purchase have exclusive validity and also apply to future business relationships with the Contractor. The applicable version in each case is the version of our Terms of Purchase valid at the time of the conclusion of the contract (available online at [www.stettler.de/agb](http://www.stettler.de/agb), Downloads). Terms of the Contractor contradicting or deviating from these Terms of Purchase are not admitted unless we expressly agree to their respective validity in writing. These Terms of Purchase are also valid if the Purchaser accepts the Contractor's services without reservation having knowledge of contradicting or deviating terms.
- (3) The legal relationships between the Purchaser and the Contractor are exclusively governed by these Terms of Purchase and any other individual agreements that may have been reached between the Parties to the Contract. An individual agreement between the Purchaser and the Contractor has priority over these Terms of Purchase, which are supplemented with such an individual agreement.

## Section 2 Bids - Bidding Documents

- (1) Bids by the Purchaser for the conclusion of a contract (Orders) are only binding if they were placed in a written order by the Purchaser (text in the letterhead of the Purchaser with order number and person of contact); the Purchaser may also send this written order by e-mail. In case of doubt, the Purchaser does not make other offers to conclude a contract apart from the above-mentioned written order.
- (2) The Contractor is entitled to accept an order placed by the Purchaser within two weeks. As a minimum, an acceptance declaration in writing is required. Orders placed with the Contractor may be withdrawn without restriction until accepted.
- (2) The Purchaser reserves all property and intellectual property rights to images, drawings, calculations, and other documents made accessible to the Contractor. These may not be made accessible to third parties without the express written consent of the Purchaser. They may solely be used for manufacture based on the order of the Purchaser. They must be returned to us unsolicited after processing of the order account. They must not be disclosed to third parties. In this respect, we refer to the provision given below under Section 9 para. 4.
- (3) The specifications attached to the bids are their integral parts.
- (4) The Purchaser may, within reason for the Contractor, demand changes to the quantity, properties, condition, and format of the article of sale until three days prior to the agreed delivery date inasmuch as the Contractor can be expected to comply in isolated cases considering the interests of the Contractor. The consequences of this, however, especially in respect of additional or reduced costs as well as the delivery date, must be agreed jointly and adequately in a separate agreement.

## Section 3 Prices - Terms of Payment

- (1) The price quoted in the order is binding. Unless otherwise agreed in writing, the agreed price covers for delivery, fully including the costs for packaging as well as any customs formalities and customs charges **'DDP' Untersteinach 15, 96154 Burgwindheim, Incoterms® 2020**. Concerning transportation, the Purchaser is a self-insurer, meaning that deliveries to the Purchaser are globally insured. Therefore, it is not necessary to charge transportation insurance costs.
- (2) The Contractor's take-back obligation, with regard to the packaging, is governed by the statutory provisions. The costs for returned packaging material must be fully credited. The packaging material is returned carriage forward.
- (3) We reserve the right to choose the payment method or the way in which the invoice is settled (e.g. cash, check or cashless transactions via bank transfer).
- (4) The statutory value-added tax is included in the price and itemized separately in the invoice.
- (5) The Contractor's invoices are issued in duplicate and in exact accordance with the specifications in our order, particularly listing order number, article and Contractor number, order item, quantity and unit price in order to ensure efficient verifiability. If the invoice does not meet these requirements, we may send it back as unverifiable with the consequence that the account receivable does not become due until a correct invoice has been issued.
- (6) The Purchaser will pay, unless otherwise agreed, the purchase price within 14 days, counted from delivery and receipt of a verifiable invoice issued in proper form with 3% trade discount deducted, or within 30 days without any deductions; the payment period begins on the date the Purchaser receives the invoice. In order to ensure that the particular cash discount period is observed, it suffices to make a written payment order of the relevant reduced invoicing amount to the account-holding bank in case of bank transfer or, in case of payment by check, it suffices for the Purchaser to post said check.
- (7) The Contractor does not have the right to assign claims against the Purchaser to third parties or to have them collected by third parties. The provision under Section 354a of the German Commercial Code (§ 354a HGB) remains unaffected by this.

## Section 4 Delivery Period - Delay in Delivery - Force Majeure

- (1) Unless otherwise agreed, deliveries are made **'DDP' Untersteinach 15, 96154 Burgwindheim, Incoterms® 2020**. The delivery period specified in the order is binding. The receipt of the goods by the Purchaser's goods receiving department is authoritative for the observation of the delivery date or the delivery period (deliveries are only accepted during the usual office hours: Monday to Friday, 7:00 AM to 5:00 PM). If delivery **'DDP' Untersteinach 15, 96154 Burgwindheim, Incoterms® 2020**, is not agreed notwithstanding these Terms of Purchase, the Contractor must supply the goods allowing for the usual period for loading and shipping/transport.
- (2) In case of a noticeable delay in the service to be performed, the Contractor must immediately inform us in writing, stating reasons and the expected duration of the delay. The Contractor may only claim causes beyond the Contractor's control if the obligation to notify was complied with in due time.
- (3) The Contractor is in default on the date the delivery period is exceeded with no need for a warning notice (Section 286 para. 2 no. 1 German Civil Code (§ 286 Abs. 2 Nr. 1 BGB)). In case of a delay in the delivery, the Purchaser is entitled to the legal claims. In particular, the Purchaser is entitled to demand compensation for damage instead of the goods and services if payment is not received within an adequate period. If the Purchaser demands compensation for damage, the Contractor has the right to prove that the breach of duty was beyond the Contractor's control.

- (4) The Purchaser is entitled to claim a generalized indemnification for delay in performance of 1% of the declared value of goods to be delivered (final invoiced amount including value-added tax), but not more than €20,000.00, for each commenced week from the date the delivery period is exceeded (failure to meet the delivery deadline), unless the Contractor can provide proof that the damage caused to the Purchaser is less. The assertion of the generalized indemnification for delay in performance does not exclude the Purchaser's claim to performance. Furthermore, the Purchaser is entitled to provide proof for greater damage caused by the delay.
- (5) If the Purchaser previously requests reference or release samples, the Contractor may only begin with batch delivery following the Purchaser's written acceptance of the sample.

## Section 5 Transfer of Risk - Documents

- (1) Unless otherwise agreed, deliveries are made 'free domicile'. The risk of accidental loss or deterioration of the ordered goods is only transferred to the Purchaser upon receipt by an authorized member of staff in the goods receiving department of the Purchaser.
- (2) In case of an agreement differing from the rules governing the sale by delivery to a place other than the place of performance, the risk of accidental loss or deterioration of the ordered goods is transferred to the carrier, the forwarding agent, or the person specified as responsible for shipping by the Purchaser upon delivery/receipt of the ordered goods by the aforementioned person.
- (3) The Contractor must state the following on all dispatch papers and shipping documents:
  - Order number
  - Article number / article description of the Purchaser
  - If applicable: index and drawing number
  - Statistic article number
  - Country of origin
  - Packaging
  - Net/gross weight

If the Contractor fails to do so, delays in processing are regarded as beyond the control of the Purchaser.

## Section 6 Liability Limitations

- (1) The Contractor must guarantee and ensure that the deliveries/services conform to the state of the art; the safety regulations and the agreed technical specifications; the relevant legal provisions and regulations, in particular the standards specified in the German Equipment and Product Safety Act (Geräte- und Produktsicherheitsgesetz - GPSG), the German Ordinance on Industrial Safety and Health (Betriebssicherheitsverordnung); and the directives of public authorities, trade and professional associations. Should deviations from these regulations become necessary in individual cases, the Contractor must obtain the Purchaser's written approval of this. The Contractor's warranty, however, is not limited by this in any way.
- (2) Irrespective of the provisions mentioned above, the Contractor must test the quality of the goods to be delivered on an ongoing basis. The Parties to the Contract will inform each other about the possibilities of improving quality.
- (3) For the case that authorities request insight into the production process and inspection documentation from the Purchaser to verify compliance with determined requirements,

the Purchaser declares to be willing to grant the same rights of insight operations and to provide any support needed.

## **Section 7 Inspection for Defects by the Purchaser - Liability for Defects of the Contractor**

- (1) Section 377 of the German Commercial Code (§ 377 HGB) notwithstanding, the Purchaser must inspect the goods for any variations of quality and quantity within a reasonable time and to notify the Contractor about any defects within a reasonable time after detection. The notice of defect is considered to have been made in due time if the Purchaser sends it within a period of 8 work days, counted from receipt of the goods, or within 14 days counted from discovery of hidden defects. Any quality agreements made between the parties are considered complementary and also apply.
- (2) Insofar as the product/workpiece is defective, the Purchaser is entitled to demand supplementary performance from the Contractor in the form of remedy of defects or manufacture and delivery of a new item (compensation delivery) free of defects. The right to claim compensation for damage, in particular the right to claim compensation for damage instead of the goods and services, remains expressly reserved. The Contractor must bear all costs for the supplementary performance, in particular transportation, infrastructure, labor, and material costs, inasmuch as these are not increased due to the product/workpiece being brought to a place other than the place of fulfillment. If the supplementary performance fails, the Purchaser is free to demand a lowering of the price (decrease) or cancellation of the contract (withdrawal) as well as compensation for damage, Section 325 German Civil Code (§ 325 BGB). In case of only an insignificant infringement of contract, in particular in case of only insignificant defects, the Purchaser, however, is not entitled to withdrawal.
- (3) In case of an endangerment of operating safety, in case of a danger of excessive damage, or in order to ensure the continued ability of the Purchaser to deliver, we are entitled to rectify the damage ourselves or to have the rectification carried out by third parties at the Contractor's expense if and insofar the Contractor cannot fulfill the supplementary performance in time to prevent risks or damage or definitely refuses supplementary performance. The costs thus accrued are borne by the Contractor. The Contractor is liable for all direct and indirect damage and charges resulting from defects of the goods and services caused to the Purchaser.
- (4) Unless otherwise prescribed by law, the limitation period shall be 24 months from the passing of risk. If the Purchaser resells goods and has to provide subsequent performance to the Customer, the limitation period for claims under a right of recourse against the Supplier, in particular claims for reimbursement of costs and other expenses incurred for subsequent performance, shall commence at the earliest two months after the date on which the Purchaser has satisfied the Customer's claims for subsequent performance. If the Supplier has undertaken to assemble the goods or materials delivered by it at the Purchaser's premises, the warranty period shall commence upon formal acceptance of the work by the Purchaser. Acceptance shall be deemed to have taken place if the Supplier has set the Purchaser a reasonable deadline for acceptance after completion of the work and the Purchaser has not refused acceptance of the work within this deadline, stating at least one defect.

## **Section 8 Product Liability - Indemnity -**

- (1) Inasmuch as the Contractor is responsible for loss of or damage to a product, the Contractor must indemnify the Purchaser from claims for damages from third parties on

first demand insofar as the cause lies in the Contractor's domain of authority and organizational area and the Contractor is liable towards third parties.

- (2) In line with the Contractor's liability for damage events within the meaning of para. 1, the Contractor must also reimburse any expenses in accordance with Sections 683, 670 of the German Civil Code (§§ 683, 670 BGB) as well as in accordance with Sections 830, 840, 426 of the German Civil Code (§§ 830, 840, 426 BGB) that result from or as a consequence of a product recall carried out by us. The Purchaser will, if possible and reasonable, inform the Contractor of the content and scope of the product recall to be carried out and give the Contractor the opportunity to comment. Other legal claims are disregarded.
- (3) The Contractor is liable for any such damage prevention measures (e.g. recall) taken by the Purchaser unless the Contractor can produce evidence that the damage was not caused by construction and/or production errors and/or failure to perform control or product monitoring duties of the Contractor (reversal of burden of proof).

## Section 9 Property Rights

- (1) The Contractor must avouch that no rights of third parties are impinged upon within the Federal Republic of Germany in connection with the delivery and the use of the objects delivered by the Contractor. Insofar as it is known to the Contractor that the delivered products are sold by the Purchaser in certain countries, the above applies to these countries too.
- (2) Should claims be made against us by a third party as a result of a breach of property rights, the Contractor must indemnify us from these claims on first written demand. This does not affect the provision in Section 280 para. 1 sentence 2 of the German Civil Code (§ 280 Abs. 1 S. 2 BGB).
- (3) The Contractor's duty of exemption applies to all expenses necessarily accrued by the Purchaser from or in connection with the claims of third parties.

## Section 10 Retention of Title - Provision of Material - Confidentiality

- (1) If the Purchaser provides parts or tools to the Contractor, the Purchaser retains title to any such provided parts or tools. Processing or alteration by the Contractor is carried out for the Purchaser. If the goods subject to retention of title of the Purchaser are processed together with other items that do not belong to the Purchaser, the Purchaser acquires co-ownership of the new object in the proportion of the value of the product (purchase price / factory price plus value-added tax) to the other items processed at the time of processing.
- (2) If goods provided by the Purchaser are inseparably compounded with other objects, the Purchaser acquires co-ownership of the new object in the proportion of the value of our product subject to retention of title (purchase price plus value-added tax) to the other compounded objects at the time of compounding if none of the objects not belonging to the Purchaser are regarded as the principal object. If the goods are compounded in such a way as to make the object belonging to the Contractor the principal object, it is regarded as agreed that the Contractor must assign proportional co-ownership to the Purchaser. The Contractor must store the property or shared property for the Purchaser.
- (3) The Contractor may only reproduce materials provided by the Purchaser with previous written consent by the Purchaser. Title to the reproductions are transferred to the Purchaser upon manufacture. The Contractor has no right of retention of materials provided, irrespective of the circumstances. Materials provided as well as reproductions thereof may not be made accessible to third parties (including subcontractors) without prior consent and not for purposes other than those agreed upon.



- (4) The Contractor must keep all drawings, images, insights, samples, manufacturing equipment, models, data storage media, or similar materials of the Purchaser confidential and must not make these accessible to third parties (including subcontractors) without our written consent.

## **Section 11 Liability Limitation**

- (1) The Purchaser is liable to the Contractor in case of grossly negligent or intentional breaches of duty on the part of the Purchaser or of the legal representatives or vicarious agents of the Purchaser. In cases of slight negligence - this being restricted to losses foreseeable and typical for this kind of contract - the Purchaser is only liable if the Purchaser, the legal representatives or vicarious agents breach a material contractual obligation ("cardinal duty"). In case of a breach of a minor contractual obligation, the Purchaser is not liable in case of slight negligence. The aforesaid limitations on liability do not apply to claims resulting from the German Product Liability Act (Produkthaftungsgesetz). Further, they do not apply to damage to limb, health and life attributable to the Purchaser.
- (2) Inasmuch as liability to the Purchaser is limited or excluded, the same applies with regard to the personal liability of the Purchaser's employees, legal representatives and vicarious agents.

## **Section 12 Applicable Law - Court of Jurisdiction - Place of Fulfillment**

- (1) This agreement is subject to the law of the Federal Republic of Germany except where the regulations of the UN Convention on Contracts for the International Sale of Goods (CISG) apply.
- (2) The contract language is German. This also applies in the event that the Parties to the Contract exchange contractual deeds in a foreign language. Should any disputes arise concerning content and interpretation of the contracts concluded by the Parties of the Contract, the contract is to be interpreted according to the ordinary and customary use and understanding of the German language.
- (3) If the Contractor is a trader as defined by the German Commercial Code, a body corporate organized under German public law, or a specialized entity subject to German public law, it is hereby agreed that as per Section 38 of the German Code of Civil Procedure (§ 38 ZPO) the place of jurisdiction for all disputes arising between the Contractor and the Purchaser is the Purchaser's place of business in Burgwindheim. The same applies if the Contractor does not have a place of general jurisdiction in Germany. The Purchaser is also entitled to bring an action against the Contractor in the court having jurisdiction over the Contractor's place of business or the place of the contracting branch.
- (4) Unless something to the contrary arises, the Purchaser's place of business is the place of fulfillment.

## **Section 13 Final Provisions**

Should individual parts of these Terms and Conditions of Purchase be legally invalid, this shall not affect the validity of the remaining provisions. Rather, the parties undertake to replace the invalid provision with one that comes closest to the economic intent.

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General Terms of Purchase – Last updated: march 2022