

# Terms and Conditions of Purchase of Stulz GmbH

(Last updated: October 2014)

## 1. General information

- 1.1. Stulz GmbH (hereinafter referred to as "the Purchaser") places orders exclusively on the basis of these Terms and Conditions of Purchase. Conflicting conditions of the Contractor are not recognised by the Purchaser. The Terms and Conditions of Purchase shall also apply to all future transactions with the Contractor.
- 1.2. The Terms and Conditions of Purchase shall only apply for contracts with companies as defined by Section 310, Subsection 1 of the German Civil Code (Bürgerliches Gesetzbuch – hereafter abbreviated to BGB).
- 1.3. If the Purchaser places orders within the framework of orders which have been placed with it, then the terms and conditions of the Purchaser's customer shall apply additionally to these Terms and Conditions of Purchase, and the Contractor must request these from the Purchaser.
- 1.4. Orders, call-offs and contracts of all kinds, and also changes or supplements to these, shall only be valid if they are made in writing. "In writing" also covers declarations sent by fax, email or other form of remote data transmission. A signature is not required to satisfy the requirement for the written form. The aforementioned requirement for the written form shall also apply to the waiving of this requirement itself.
- 1.5. The Contractor shall be bound by its offers for at least 30 days.

## 2. Delivery deadline, delayed delivery, contractual penalty

- 2.1. Deadlines that have been agreed are binding. The punctuality of deliveries which do not entail assembly or erection shall be determined by their receipt at the place of receipt stipulated by the Purchaser, while the punctuality of deliveries which entail assembly or erection as well as of contracted services shall be determined by their acceptance.
- 2.2. Should the Contractor fall into arrears with the delivery/services, then the Purchaser shall be entitled to impose a contractual penalty ranging from 0.3% of the net final invoice amount per business day to a maximum of 5% of the net final invoice amount. The right to make further claims remains reserved. A contractual penalty that has become payable should be deducted from any damage compensation claims if there is an alignment of interest between the contractual penalty and said compensation claims. The Purchaser shall be entitled to declare the reservation of the contractual penalty up until the final payment.

## 3. Transfer of risk, delivery, prices, reservation of title

- 3.1. For deliveries which entail assembly or erection and for services, risk is transferred to the Purchaser upon acceptance. For other deliveries, risk is transferred to the Purchaser when the goods are received at the place of receipt stipulated by the Purchaser.
- 3.2. The prices agreed are fixed prices. They incorporate free delivery to the place of use, including packaging.
- 3.3. If, under a deviating agreement, freight and packaging costs are borne by the Purchaser, the Contractor must account for and document these separately in its invoices.
- 3.4. Partial performances require the Purchaser's approval. Deliveries in excess of those agreed must be picked up immediately by the Contractor at the Purchaser's request.
- 3.5. Premature deliveries likewise require the Purchaser's approval. In the event of a delivery being made before the agreed date, the Purchaser reserves the right to return the consignment at the cost and risk of the Contractor. In the event of a premature delivery not being returned, the goods shall be stored at the premises of the Purchaser up until the delivery date at the cost and risk of the Contractor. The invoice shall be paid in accordance with the agreed deadline.
- 3.6. Delivered goods shall become the property of the Purchaser when they are handed over. The Contractor shall ensure that no third-party rights (such as reservation of title, lien, etc.) exist, and shall indemnify the Purchaser from third-party claims in this respect.

## 4. Invoices, payment, offsetting, retention, assignment

- 4.1. Invoices must be open to scrutiny and sent in duplicate to the Purchaser's headquarters in Hamburg, in accordance with the agreed billing rules. All necessary documents such as carriage notes, drawings, weighing slips, stock lists, etc. should be attached to the invoices. Work done at hourly rates should be invoiced on a monthly basis with the required evidence attached, including details on the specific individual services performed and the time and materials expended. Invoices which have not been properly drawn up shall be deemed to have been received by the Purchaser only at the time of their correction.
- 4.2. Payments shall be made, unless otherwise agreed, within 14 days with a 3% discount or within 30 days with no discount following delivery or acceptance and receipt of a proper invoice. A cash discount may also be permitted if the Purchaser offsets or retains a reasonable portion of payments on the grounds of defects.
- 4.3. Insofar as the Contractor is obliged to deliver documentation, operating instructions or material test certificates, then the payment period for invoices shall not commence prior to the receipt of these documents.
- 4.4. The payment period shall be deemed to have been adhered to if the amount due is transferred on the day it falls due or on the date of Stulz's very next weekly payment run after this.
- 4.5. Payment default shall always be subject to a prior dunning letter. Any default interest/damages shall be limited to 7.5%.

- 4.6. Making a payment shall not constitute recognition that the invoice is correct or that the delivery/service is as specified in the contract.
- 4.7. On the basis of authorisation to this effect by Montaplast GmbH, 51597 Morsbach, the Purchaser is entitled to offset Montaplast's claims against the Contractor's claims. The Purchaser shall furthermore be entitled to offset its claims against any claims the Contractor has against Montaplast.
- 4.8. The Contractor shall only have the right to make offsets if its counterclaims have been judicially determined or are uncontested or recognised by the Purchaser or have a close synallagmatic relationship with the Purchaser's claim. The Contractor shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship, or has been judicially determined, is uncontested or is recognised by the Purchaser.
- 4.9. The Contractor may assign claims against the Purchaser to third parties only with the written consent of the Purchaser.

## 5. Termination or withdrawal for good cause

The Purchaser can rescind the contract or terminate the contract with immediate effect if the Contractor discontinues its payments, or if the Contractor, the Purchaser (with due legitimacy) or another creditor applies for insolvency proceedings (pursuant to Sections 14 and 15 of the German Insolvency Act - InsO) or for similar legal proceedings, or if such proceedings have been instigated or their instigation declined due to lack of assets.

The Purchaser's claims for compensation shall remain unaffected by this.

## 6. Performance of the deliveries/services, defect claims, delivery of spare parts

- 6.1. The Contractor's deliveries/services must be made/performed properly and professionally using the most suitable materials and must use state-of-the-art technology and conform to all legal provisions and relevant regulations and directives issued by public authorities, professional and trade associations (particularly the DIN, VDE, and CE provisions pertaining to safety, occupational safety, accident prevention and environmental protection). The regulation in Section 434, Subsection 1 (3) BGB (public statements by the manufacturer or seller) shall apply, including in the case of a contract for work and services.
- 6.2. The Contractor must enclose any safety equipment that might be required as part of the delivery with no additional charge.
- 6.3. The Contractor must enclose all documents (test logs, tools, drawings, plans, operating instructions, etc.) which are required for the acceptance, the operation, the maintenance and repair at least in triplicate and without extra charge.
- 6.4. The Purchaser shall have the right to select the nature of any supplementary performances, including in the case of a contract for work or services. Section 439 BGB shall apply accordingly.
- 6.5. The Purchaser shall have the right to self-performance, including in the case of purchase contracts. Section 637 BGB shall apply accordingly. To avert acute danger and prevent additional costs, the Purchaser may, at the expense of the Contractor and without granting a grace period, remedy the defect itself or arrange for the defect to be remedied if, due to the urgency of the situation, it is not possible to inform the Contractor in good time and give it the opportunity to take remedial action.
- 6.6. Provided that nothing to the contrary has been explicitly agreed and the law does not provide for a longer limitation period, then the limitation period for claims for defects shall amount to 36 months. In the case of a building, or items that have been used for a building according to their standard manner of use and have caused its defectiveness, the limitation period for claims for defects shall amount to 5 years. The limitation period shall begin on the date the delivery item is handed over to the Purchaser or to a third party named by the Purchaser at the place of receipt or use stipulated by the Purchaser. For delivery items that have to be assembled at the place of receipt or use, the limitation period shall begin once the assembly has been completed, with an agreed trial operation, provided this is carried out without any complaints. If an acceptance is required by law or by the terms of the contract, the limitation period shall begin on the date of successful acceptance. If the agreed assembly, the execution of the agreed trial operation or the contractually agreed acceptance is delayed due to no fault of the Contractor, the limitation period shall begin no later than 6 months after the delivery items have been delivered. In the case of a contract for work and services, the limitation period shall only begin on or after the date of successful acceptance.
- 6.7. The place of performance of the subsequent performance is the place where the product is located, as intended.
- 6.8. The Contractor shall, in particular, bear all expenses arising in connection with ascertaining and eliminating defects, including expenses incurred at the Purchaser's premises, particularly: inspection costs, disassembly and reassembly costs, transport, infrastructure, work and material costs and any other costs related to the replacement of defective parts.
- 6.9. If the Contractor fulfils its subsequent performance obligation by supplying a replacement product, then the limitation period for the product/work provided shall begin anew after the delivery/acceptance thereof unless, at the time of the supplementary performance, the Contractor expressly reserved the right to supply a replacement only as a gesture of goodwill, in order to avoid disputes, or in the interest of maintaining the supply relationship. The same shall apply in the event of extensive rectification work on the part of the Contractor.
- 6.10. By issuing a receipt and signing-off plans that have been submitted or the like, the Purchaser is not relinquishing its right to make claims for defects and other rights.

- 6.11. In the event that replacement products are supplied, the Purchaser shall not have to pay any consideration or compensation for the use of the defective goods that were originally delivered.
- 6.12. The Contractor shall bear the cost and risk of returning any defective goods.
- 6.13. The Contractor undertakes, for the duration of 10 years from the date of delivery of a machine, to supply technical devices or similar spare parts for these at reasonable prices.

#### **7. Packaging**

The goods must be packaged in accordance with the Purchaser's packaging instructions and in such a way as to prevent damage in transit. Only environmentally friendly packaging materials may be used. Should the Purchaser, on an exceptional basis, be invoiced separately for packaging, then the Purchaser shall be entitled to return packaging which is in a good condition to the Contractor freight-free, in return for compensation amounting to 2/3 of the corresponding value shown in the invoice.

#### **8. Property rights**

- 8.1. The Contractor guarantees that all deliveries are free of third-party industrial property rights.
- 8.2. The Contractor shall indemnify the Purchaser and/or its customers, upon their first request and with the Contractor bearing all incidental costs, from all claims that could be asserted by third parties due to a breach of commercial industrial property rights.

#### **9. Product liability, indemnification, liability insurance protection**

- 9.1. The Contractor undertakes to hold the Purchaser harmless from third-party product liability claims, upon its first request and with the Contractor bearing all incidental costs, if the defectiveness of one of the Purchaser's products has been caused by a product supplied by the Contractor. The Contractor furthermore undertakes to refund to the Purchaser any costs arising as a result of this, including the costs of any necessary product recall.
- 9.2. The Contractor undertakes to maintain a product liability insurance policy with a reasonable amount of cover – at least € 5 million per incident of injury to persons/damage to property – flat rate. The Contractor hereby assigns to the Purchaser its claims against the insurance company in the event of damage or loss. The Purchaser accepts this assignment, whereby the Purchaser's insurance benefits for compensation claims in excess of this shall remain unaffected.

#### **10. Execution documentation, tools, samples, information, confidentiality**

- 10.1. Samples, manufacturing equipment, tools, profiles, measurement and test devices, materials provided, drawings, work standard sheets, print templates and other documents which the Purchaser makes available to the Contractor shall remain the property of the Purchaser. They may not be used by the Contractor for purposes other than those stipulated in the contract, neither may they be replicated or made available to third parties.
- 10.2. The Contractor is obliged to keep all information it receives from the Purchaser strictly confidential. This duty of confidentiality shall also remain in force following the execution of this contract; it shall expire if and to the extent that the manufacturing know-how contained in the aforementioned documents which have been made available has become general knowledge. Articles manufactured in accordance with the documents of the Purchaser may not be made available, assigned or sold by the Contractor to any third parties.
- 10.3. Moulds, tools, samples, print templates, etc. which are charged to the Purchaser shall become the property of the Purchaser at the time of payment; these shall be kept securely by the Contractor without charge on behalf of the Purchaser, and shall be surrendered to the Purchaser upon demand.

#### **11. Passing on of orders to third parties**

The passing on of orders to third parties is not permitted without the written consent of the Purchaser. Without prejudice to its other statutory claims, the Purchaser may withdraw from the contract and/or assert a claim for compensation in place of the performance if it has first granted the Contractor a reasonable period within which to render the performance itself, and this has expired without effect.

#### **12. Provisions relating to construction services**

- 12.1. For construction services, the provisions of the German Construction Tendering and Contract Regulations (Vergabe- und Vertragsordnung für Bauleistungen – hereafter abbreviated to VOB) Parts B and C, subject to the changes resulting from Items 12.2 to 12.8, shall apply with overriding priority, unless otherwise stipulated in the relevant construction contract. Items 1 to 11 and 13 of these Terms and Conditions of Purchase shall merely have supplementary status, i.e. in the event of contradictions, Item 12 of these Terms and Conditions of Purchase shall take precedence over VOB/B, and VOB/B shall take precedence over Items 1 to 11 and Item 13 of these Terms and Conditions of Purchase.
- 12.2. The limitation period for defect claims shall amount to 5 years from the acceptance of the services in aggregate. This shall apply for all services mentioned in Section 13, Subsection 4 VOB/B. Section 13, Subsection 4, No. 2 VOB/B is excluded.
- 12.3. An entitlement to compensation for work done at hourly rates shall only exist if settlement on the basis of hours worked was agreed in writing with the purchasing department of the Purchaser before the work was carried out. The statement of hourly rates, which must be completed on a daily basis, should contain the job titles and full names of the people deployed as well as details of which specific individual services were carried out and the

- respective materials and time expended. These must be presented to the construction manager of the Purchaser for signing on or before the next working day. Remuneration of hourly wage slips which have not been signed shall be excluded. In other respects, Section 15 VOB/B shall apply.
- 12.4. Construction services must in every case be formally accepted. The utilisation or commissioning of a finished construction service shall not substitute the acceptance and shall not constitute any waiver of the formal acceptance. Partial acceptances pursuant to Section 12 No. 2 VOB/B and fictitious acceptances pursuant to Section 12 No. 5 VOB/B are excluded.
- 12.5. The discontinuance of individual services commissioned by the Purchaser shall lead to a corresponding reduction of the contract price.
- 12.6. Should the works be interrupted or discontinued for reasons which are beyond the influence of the Purchaser (e.g. abandonment of the construction project by the construction clients, effects of the weather), this shall not entitle the Contractor to bring any possible claims against the Purchaser. Those parts of the performance already rendered shall instead be settled in accordance with contract prices – in the case of flat-rate price agreements, on a pro-rata basis.
- 12.7. The Purchaser may claim any contractual penalties payable up until the time of the final payment.
- 12.8. Risks shall be borne in accordance with the provisions of BGB. § 7 VOB/B is not applicable.

#### **13. Place of jurisdiction, choice of law, miscellaneous**

- 13.1. Unless otherwise agreed, the place of performance for the deliveries/services provided by the Contractor shall be the place of receipt specified in the order.
- 13.2. If the Contractor is a merchant, a legal entity under public law or a special fund under public law, then Hamburg shall be the place of jurisdiction.
- 13.3. The laws of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention of the International Sale of Goods (CISG).
- 13.4. In the event of any of the individual provisions contained within the present Terms and Conditions or any part thereof being or becoming invalid, then this shall not affect the validity of the remaining provisions or remaining part thereof.