

NORDMEYER SMAG
Mining & Drilling Technologies GmbH (NSMD)

General Terms and Conditions of Purchase

§ 1 General, Scope of Application

(1) These General Terms and Conditions of Purchase (GTP) are applicable for all business relations with our business partners and suppliers (hereinafter "Supplier"). The GTP shall only apply if the Supplier is a merchant (§ 14 BGB, German Civil Code), a legal entity under public law or a special fund under public law.

(2) The GTP shall apply in particular to contracts concerning the sale and/or delivery of movable items (hereinafter also referred to as "goods"), irrespective of whether the Supplier manufactures the goods himself or purchases them from subcontractors (§§ 433, 651 BGB, German Civil Code). In their respective versions, the GTP shall also apply as a framework agreement for future contracts concerning the sale and/or delivery of movable items with the same Supplier, without our having to refer to them in each individual case; we shall inform the Supplier without delay in the case of alterations to our GTP.

(3) These GTP apply exclusively. Any divergent, conflicting or supplementary general terms and conditions of business of the Supplier shall only then and insofar become an integral part of the contract to the extent of their validity which we have explicitly agreed in writing. This consent requirement applies to every case including, for example, if we unconditionally accept the deliveries from the Supplier in the knowledge of his general terms and conditions of business.

(4) Isolated agreements concluded with the Supplier in individual cases (including ancillary agreements, additions and amendments) have precedence over these GTP in every case. For the content of such agreements, a written contract or our written confirmation is decisive.

(5) Legally relevant declarations and notifications which are to be submitted to us by the Supplier following conclusion of the contract (e.g. deadlines, admonitions, declaration of rescission) require the written form and consent in order to be valid.

(6) References to the validity of statutory regulations shall have only clarifying significance. Even in the absence of such a clarification, the statutory regulations shall therefore also apply insofar as they are not directly amended or explicitly excluded in these GTP.

§ 2 Conclusion of Contract

(1) Our order shall be considered binding upon written submission or confirmation at the earliest. The Supplier is obliged to inform us regarding obvious errors (e.g. clerical and calculation errors) and incompleteness of the order, including the order documents, prior to acceptance, for the purpose of correction or completion; the contract shall otherwise be deemed not concluded.

(2) The Supplier is obliged to confirm our order in writing within a period of 3 days or to unconditionally execute the order by sending the goods (acceptance). A belated acceptance is deemed a new offer and requires our acceptance.

§ 3 Delivery Period and Delay in Delivery

(1) The delivery period stated by us in the order is binding. The Supplier is obliged to notify us in writing without delay if he anticipates that he will be unable to meet the delivery date, for whatever reason.

(2) In the event of the Supplier not providing his services or not providing his services within the agreed delivery period or if he is in default, our rights - in particular as regards rescission and compensation - shall be determined in accordance with the statutory regulations. The provisions of Par. 3 shall remain unaffected.

(3) If the seller is in default, we may - in addition to further statutory entitlements - demand a lump sum compensation for our default damage in the sum of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered behind schedule. We reserve the right to prove that a higher loss has occurred to us. The Supplier reserves the right to prove that we have suffered no or only a significantly lower loss.

§ 4 Performance, Delivery, Transfer of Risk, Delay in Acceptance, Customs Regulations

(1) Without our prior written consent, the Supplier is not entitled to have the performance owed by him executed through third parties (e.g. sub-contractors). The Supplier shall bear the risk of procurement for his services unless otherwise agreed for the individual case (e.g. the sale of available stock).

(2) The delivery shall take place within Germany, "free domicile" to the location specified in the order. If the destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business in Braunschweig. The respective destination is also the place of fulfilment (obligation to provide).

Imported goods shall be delivered duty-paid. Under EC Regulation No. 120/2001 (long-term supplier's declaration), the Supplier is obligated, at his own expense, to issue the required declarations and information, to allow inspections by the customs authorities and to provide the necessary official confirmations. We refer without exception to Incoterms 2010, DDP.

(3) The delivery shall be accompanied by a delivery note stating the date (issuance and despatch), the content of the delivery (article number and quantity) and our order identification (date and number). In the case of the delivery note being missing or incomplete, we shall not be responsible for the delays in processing and payment resulting herefrom.

The Supplier shall also be obliged to inform us, extensively and in writing, concerning any authorisation requirements for re-exports/exports in accordance with German and European export control regulations and customs regulations in the country of origin of the goods. The Supplier is obligated, at his own expense, to issue the required declarations and information, to allow inspections by the customs authorities and to provide the official confirmations or other necessary documents which are necessary for the import customs clearance of goods. The customs tariff number must be indicated on all documents. Any delays caused by missing or deficient declarations, information or documents of the Supplier shall be borne by the Supplier.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us at the place of fulfilment at the time of delivery. Provided acceptance has been agreed upon, this shall be decisive for the transfer of risk. In all other cases, the statutory provisions of the contract for services shall also apply to acceptance accordingly. The same applies to transfer or acceptance if we are in default of acceptance.

(5) The statutory provisions shall apply to the commencement of our delay in acceptance. The Supplier must also expressly offer us his service even in the case of a defined or definable calendar period having been agreed upon for an act or contribution on our part (e.g. provision of material). Should we fall into default of acceptance, the Supplier may, in accordance with the statutory provisions, demand compensation for his additional expenditure (§ 304 BGB). If the contract relates to non-fungible goods which are to be produced by the Supplier (individual production), the Supplier is entitled to further rights only if we are obliged to co-operate and are responsible for the failure to co-operate.

§ 5 Prices and Terms of Payment

(1) The price stated in the order is binding. All prices include statutory value added tax, provided this is not stated separately.

(2) Unless otherwise agreed for the individual case, the price includes all services and ancillary services of the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. orderly packaging, transport costs including possible transport and liability insurance). The Supplier shall take back the packaging material at our request.

(3) The agreed price is due for payment within 30 calendar days following full delivery and performance (including any agreed acceptance and testimonies) and receipt of a proper invoice. If we make payment within 14 calendar days, the Supplier shall grant us a discount of 3% on the net amount of the invoice. In the case of bank transfer, the payment is deemed to have taken place punctually if our transfer order is received by our bank prior to expiry of the payment period; we shall not be held responsible for delays caused by the banks involved in the payment process.

(4) We shall not be obliged to provide interest on maturity. The default interest is 5 percentage points above the base interest rate. The statutory provisions shall apply in the occurrence of our default, whereby in deviation from this a written reminder from the Supplier is necessary in each case.

(5) The rights of offsetting and retention as well as the plea of unfulfilled contract shall be granted to us in accordance with statutory provisions. In particular, we are entitled to withhold due payment for as long as we still have claims against the Supplier arising from incomplete or defective services.

(6) The Supplier shall only have a right of offset or retention in the event of legally upheld or undisputed counterclaims.

§ 6 Confidentiality and Retention of Title

(1) We shall retain the right of title and copyrights for illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and returned to us following completion of the contract. The documents must be kept secret from third parties, even after termination of the contract or after delivery of the service. The obligation of confidentiality shall not be extinguished unless and until the knowledge contained in the provided documents has become generally known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for the manufacture. Such items shall be kept separate, provided they are not processed, at the expense of the Supplier who shall ensure appropriate insurance against destruction and loss.

(3) A processing, mixing or compounding (further processing) of provided objects shall be undertaken on our behalf by the Supplier. The same applies to our further processing the delivered goods, so that we are considered to be the manufacturer and acquire ownership of the product with the further processing in accordance with the legal regulations at the latest.

(4) The transfer of the goods to us shall be carried out unconditionally and without consideration of the payment of the price. Should we, however, in individual cases accept an offer made by the Supplier which is conditional to the payment of the purchase price, the retention of title for the Supplier shall expire with the purchase price payment for the delivered goods at the latest. In the normal course of business, we remain authorized to sell the goods on under assignment in advance of the demands resulting herefrom (alternatively, validity of the simple and, for the further sale, the extended retention of title). This excludes, for any event, all other forms of retention of title, in particular the extended retention of title, the transferred retention of title and the retention of title prolonged for the further processing.

§ 7 Defective Delivery

(1) Unless otherwise determined below, the statutory regulations shall apply to our rights in the case of physical defects and defects of title of the goods (including incorrect delivery and shortfall in delivery as well as improper assembly or faulty assembly, operation or usage instructions) and other breaches of obligation on the part of the Supplier.

(2) In accordance with the statutory provisions, the Supplier is particularly liable for the goods having the agreed characteristics upon transfer of risk. For the definition of the agreed characteristics, those product descriptions shall apply which are the subject matter of the respective contract - in particular through their designation or reference in our order - or which have been incorporated into the contract in the same way as these GTP. It is thereby immaterial whether the product description originates from us, from the Supplier or from the manufacturer.

The Supplier shall also guarantee that the delivered goods or the materials and substances used for the manufacture thereof comply with all national and European regulations (in particular regarding workplace, health and safety, fire and environmental protection and construction, trade and traffic regulations as well as the German Equipment and Product Safety Act and implementing provisions) as well as all relevant technical conditions (in particular VDE, DIN, CE, GS, PTB, TÜV, FTZ, DVGW specifications) and that they bear the necessary test labels and/or conformity marks.

(3) Notwithstanding § 442 para. 1 S 2 BGB (German Civil Code), we shall be entitled to unlimited deficiency claims even if we have not been aware of the defect at the time of conclusion of contract as a result of gross negligence.

(4) The statutory provisions (§§ 377, 381 HGB, German Commercial Code) shall apply to the commercial examination and obligation to notify defects, with the following stipulation: Our obligation to inspect is limited to apparent defects which can be visually identified during our incoming goods inspection, including the shipping documentation, as well as during our quality control through the random sampling procedure (e.g. transport damages, incorrect and shortfall delivery). If an acceptance has been agreed, there shall be no obligation to inspect. Furthermore, the extent to which

an examination is feasible in regard to the circumstances of the individual case in the ordinary course of business is decisive. In case of doubt, the goods shall be accepted "under reservation" by us. Our obligation to report for defects discovered at a later time remains unaffected. In all cases, our complaint (notification of defects) shall be deemed to be immediate and timely if received by the Supplier within a maximum of 5 working days.

(5) The costs incurred by the Supplier for the purposes of inspection and rectification (including possible dismantling and installation costs) shall also be borne by the Supplier even if it is found that there was, in fact, no deficiency. Our liability for damages in the case of unjustified demands for the correction of defects shall remain unaffected; in this respect we shall, however, only be liable if we have recognized or gross negligently failed to recognize that there was no defect.

(6) In the case of the Supplier not fulfilling his obligation regarding supplementary performance - at our discretion through elimination of the defect (rectification) or through the delivery of a defect-free item (replacement delivery) - within a reasonable time limit set by us, we shall be entitled to eliminate the defect ourselves and to demand compensation and/or a commensurate advance payment from the Supplier for the outlay necessary for this purpose. In the case of the supplementary performance by the Supplier being abortive or unacceptable for us (e.g. due to particular urgency, endangerment of operational reliability or the imminent occurrence of disproportionate damages), no deadline shall be required; we shall notify the Supplier of such circumstances immediately, if possible in advance.

(7) In addition, we shall remain entitled to a reduction of the purchase price or to rescission of the contract in the event of a defect in material or defect of title in accordance with the statutory provisions. Furthermore, we shall be entitled to compensation for damages and expenses in accordance with statutory provisions.

§ 8 REACH Regulation

The Supplier shall ensure that his deliveries comply with the provisions of EC Regulation No. 1907/2006 on the Registration, Evaluation, Authorisation and restriction of CHemicals (REACH Regulation). The materials contained in the Supplier's products shall be, as far as is necessary in accordance with the provisions of the REACH Regulation, pre-registered or registered following expiry of the transitional period, provided the materials are not exempted from the registration. The Supplier shall provide safety data sheets in accordance with the REACH Regulation or the information required pursuant to Article 32 of the REACH Regulation. Upon request, the Supplier shall also inform us regarding the information in accordance with Article 33 of the REACH Regulation. The information obligations of the REACH Regulation shall be updated to the current version at the beginning of each new financial year. It is the responsibility of the Supplier to spontaneously provide this information to the customer.

§ 9 Manufacturer's Liability

(1) If the Supplier is responsible for a product defect, he shall indemnify us against claims from third parties if the cause of the defect falls within his sphere of control and organisation and he himself is liable in relation to third parties.

(2) Within the scope of his indemnity obligation, the Supplier shall, pursuant to Art. §§ 683, 670 of the BGB (German Civil Code), reimburse expenditures arising from or in connection with the utilisation of third parties, including product recall actions carried out by us. We shall inform the Supplier concerning the content and extent of recall measures, as far as possible and reasonable, and provide him with the opportunity to respond. Any further statutory claims remain unaffected.

(3) The Supplier shall conclude and maintain a product liability insurance with a lump-sum coverage of at least 10 million euros per person/material damage.

§ 10 Statute of Limitation

(1) The reciprocal claims of the contractual parties shall become statute-barred in accordance with statutory provisions, unless otherwise specified below.

(2) Notwithstanding § 438 para. 1 no. 3 BGB (German Civil Code), the general limitation period for claims for defects shall be 3 years from the transfer of risk. If an acceptance has been agreed, the limitation begins with the acceptance. The 3-year limitation period also applies correspondingly for claims resulting from defects of title, whereby the statutory limitation period for third-party claims in rem for the restitution of property (§ 438 para 1 no. 1 BGB, German Civil Code) remains unaffected. Claims arising from defects of title shall not become statute-barred in any case as long as the third party is able to assert the right against us, in particular in the absence of limitation.

(3) The limitation periods of the purchase right, including the aforementioned extension, shall apply - within the limitations of the law - to all contractual claims for defects. Insofar as we are entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB, German Civil Code) shall apply, unless the application of the limitation period of the purchase right in individual cases would lead to a longer limitation period.

§ 11 Choice of Law and Place of Jurisdiction

(1) For these GTP and all legal relationships between us and the Supplier, the law of the Federal Republic of Germany shall apply, under exclusion of international uniform law, in particular the UN purchase right (CISG). The prerequisites for and effects of the retention of title shall be subject to the law at the respective location of the object if, under that law, the choice of law in favour of German law would be inadmissible or invalid.

(2) In the case of the Supplier being a merchant within the meaning of the HGB (German Commercial Code), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes - including international disputes - arising from the contractual relationship shall be our place of business in Braunschweig. We are, however, also entitled to take legal action at the place of fulfilment of the obligation to provide.

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