

# General Terms and Conditions of Purchase

## Carl Cloos Schweißtechnik GmbH



### 1. Scope of application

These Conditions of Purchase shall apply exclusively in relation to purchases from a business within the meaning of § 14 of the German Civil Code as well as from public law entities; if the Supplier's General Conditions of Purchase conflict with or differ from same, we shall only recognize said General Conditions of Purchase if their validity has been expressly approved by us in writing. Our Conditions of Purchase shall also apply where we accept or pay for products and services of the Supplier (hereinafter: contractual goods) knowing that the Supplier's conditions conflict with or differ from our Conditions of Purchase. Our Conditions of Purchase shall also apply to all future deliveries and services by the Supplier.

### 2. Conclusion of Contract

Agreements, orders and call off deliveries, as well as other modifications and additions, must be made in writing. An order shall be deemed to be accepted unless the Supplier notifies us to the contrary within five (5) working days of the order date.

Orders placed orally or by telephone shall only be valid where subsequently confirmed by us in text form. The same shall apply in relation to ancillary agreements and amendments to the contract.

We reserve the right to request changes to the goods or service after the contract date insofar as it is reasonable for the Supplier. In the event of such changes appropriate adjustments shall be made to reflect the effects for both sides, particularly in terms of an increase or decrease in cost or delivery dates.

In all communication reference must be made to the correct order number.

### 3. Prices

The prices quoted are fixed and shall be DDP delivery address (INCOTERMS 2010) including packaging, plus the sales tax applicable in each case.

Requests for quotations are without obligation however quotations requested shall be binding. There shall be no charge for any quotation submitted by the Supplier or for any visit or for the preparation of quotations and projects. The Supplier shall be bound by the terms of his quotation for a period of 4 weeks beginning upon receipt.

### 4. Sub Contractors

In order to fulfill its contractual obligations the Supplier shall be entitled to use the services of sub-contractors provided that we have previously consented thereto in writing. Such consent shall not be unreasonably withheld.

### 5. Payment, Right of Set Off, Right of Retention

Except where otherwise agreed payments shall be remitted within 60 days net without deduction. Payments remitted within 30 days shall be subject to 2% discount and payments remitted within 14 days to 3% discount.

Payment deadlines shall begin to run upon receipt of a complete, correct and verifiable invoice, but not before receipt of the entire delivery or acceptance of performance (where agreed).

Separate invoices shall be submitted with all corresponding documents and data after the goods have been supplied / services performed and shall comply with statutory and accounting requirements. All invoices shall include our order number and shall state the amount of VAT separately. Only invoices properly submitted (i.e. complete, correct and verifiable) shall be deemed received.

Where payment in advance has been agreed the Supplier shall where requested provide an appropriate security in

the form of an unlimited absolute guarantee drawn on a major German bank payable on demand and waiving the defence of failure to pursue remedies.

We shall be entitled to exercise rights of set off and retention to the extent provided by law. Any assignment by the Supplier of his claim to the purchase price shall be subject to our previous written consent. This shall not apply to assignments to a credit institution for securing business loans or an extended reservation of title. The Supplier may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Supplier shall only be entitled to rights of retention in so far as these are based on the same legal transaction.

### 6. Place of Performance, Supplies, Packing

Unless otherwise defined on a case by case basis, delivery is agreed DDP delivery address (INCOTERMS 2010). The Supplier shall be liable for the material risk until acceptance of the goods by us or our agent at the agreed place for delivery of the goods.

Partial deliveries are not permitted unless we have expressly agreed to the same. In any event any non delivered quantities shall be listed on the delivery note and on the invoice.

Quantities, weights and dimensions shall be based on the values ascertained by us during incoming goods inspection, subject to evidence to the contrary.

The Supplier undertakes to use environmentally friendly packaging that can be recycled or disposed of at low cost. Styropor chips are not permitted for use as packaging material.

Packaging must guarantee protection against damage, dirt and damp during transport and storage in order that assembly at our premises or the premises of one of our agent companies is possible at no further cost. Any important information on contents, storage and transport must be visibly affixed to the packaging. Loaned packaging shall be returned carriage unpaid to the Supplier's address.

### 7. Delivery Dates

Agreed delivery dates are binding. Where the delivery date is a calendar week the Friday of that week shall be the last delivery date.

Where the Supplier fails to deliver on time the statutory provisions shall apply. If the Supplier realises that delivery as specified in the contract is or will be impossible owing to problems with production, supply of primary material, compliance with the delivery date or similar circumstances, the Supplier must notify us accordingly without delay.

The surrender of the goods at the delivery address specified shall be definitive in terms of determining compliance with the delivery date or the declaration of acceptance, where this has been agreed.

The Supplier shall only be permitted to rely on the absence of requisite information or our failure to supply documents where he has failed to receive the same despite having set a reasonable deadline in writing.

In the event of late delivery or service we shall be entitled to impose liquidated damages of 0.2% of the net value of the goods delivered late per working day, up to a maximum of 5% of the value of the goods. We reserve the right to claim additional damages.

Unconditional acceptance of a late delivery or service does not constitute a waiver of the claims to which we are entitled as a result of late delivery or service; this shall apply until we have remitted the sums owing in full.

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Where the Supplier delivers earlier than the agreed delivery date we shall be entitled at our option to store or return the goods at the expense and risk of the supplier.

### 8. Force Majeure

In the event of a default in delivery which is caused by Force Majeure the agreed delivery term shall be extended by the period of prevention. Force Majeure shall mean all circumstances beyond the control of the parties to include, without limitation, natural disasters, strikes, war, riots, governmental decrees, general shortages of energy and raw materials and unforeseen blockades of transport routes.

Notwithstanding the aforesaid the Supplier is obliged to inform us without any undue delay of any difficulties or delays in delivery apparent to him in order that appropriate damage limitation measures can be undertaken, in good time and by mutual agreement.

Force majeure and events beyond our control shall entitle us, without prejudice to our other rights, to withdraw from the contract either fully or in part, where we have no further commercial interest in performance as a result.

### 9. Non Disclosure / Data Protection

During the term and after termination of this contract the parties shall not disclose to third parties or use for their own business aims without authorisation any confidential information (to include without limitation documents, samples, sketches, business intentions, personal data, problems, data and/or problem solutions, or any other know-how of any kind as well as information visually gained by the inspection of plants or facilities) received from the other party or of which the parties became aware by reason of their collaboration. The aforesaid non disclosure

obligation shall also apply in relation to the existence and content of this contract. The parties shall also impose this obligation upon their employees. We retain exclusive title to all information and all legal rights in relation thereto;

The Supplier shall not be entitled to use goods manufactured to our drawings, models or such like for its own purposes or to offer or supply the same to third parties either itself or through a third party.

The Supplier shall also impose this obligation upon its employees and other third parties, who have access to the confidential information and shall provide evidence of the same where requested.

The duty of non-disclosure shall not apply to information which was previously known to the other party outside the contractual relationship, was lawfully acquired from a third party, is generally known or is or becomes the state of technology or has been released by us.

The non-disclosure obligation shall remain in force for a period of 5 years after the expiration of this agreement.

Upon the expiration of this agreement the parties shall return all confidential documents and information unrequested or destroy the same where requested to do so by the disclosing party and provide evidence thereof.

The parties shall comply with all data protection requirements, including where access is given to the other party's plant, or to its hard and software. They shall ensure that their vicarious agents shall also comply with these provisions and that they are bound not to disclose any data prior to the commencement of their work. The parties do not intend to process or use personal data on behalf of the other party. Any transfer of personal data shall occur only in exceptional circumstances as a side effect of performance of the parties contractual obligations. All personal data shall be treated by the parties in accordance with data protection laws.

### 10. Quality Assurance, Incoming Goods Inspection

The Supplier undertakes to maintain a system of quality management which corresponds to the most recent technical standards. The Supplier shall carry out tests during manufacture in accordance with the requirements of his system of quality management. The Supplier shall carry out final testing of the products which shall ensure that only non faulty goods are supplied.

Acceptance of the goods or service is subject to an examination thereof as to the absence of faults insofar as and as soon as such an examination is feasible in the ordinary and proper course of business. Such examination shall include the type and quantity of the products supplied as well as any external damage thereto.

Furthermore any incoming goods inspection is replaced by the quality assurance measures undertaken by the Supplier in accordance with the provisions aforesaid. The Supplier waives the defence of late notification of defects provided for in § 377 of the German Commercial Code (HGB)

### 11. Defective Goods

The statutory regulations on material defects and deficiencies in title shall apply without restriction, unless otherwise provided below.

In urgent cases, especially in order to counter acute risks or prevent major damage, we shall be entitled to rectify defects ourselves or arrange for such to be rectified by third parties, at the Supplier's expense, insofar as it would be unreasonable to request the Supplier to carry out the same in view of the urgency. We undertake to inform the Supplier of any such warranty claim together with the nature and scope of urgent action undertaken without delay.

Claims for material defects and deficiencies in title shall be time barred after 36 months. Any Products repaired or replaced during the warranty period shall benefit from a new full warranty period upon the terms set out aforesaid and such new warranty period shall commence upon complete performance by the Supplier of our warranty claim.

The Supplier shall be liable for all costs accruing to us as a result of defective delivery of the contractual goods, in particular transport, travel, work, material costs and investigation costs in excess of those normally incurred.

In the event of recourse we shall be entitled to demand compensation from the Supplier for the expenditure accruing to us in relation to our customers on account of the defective service.

The Supplier undertakes to take back and dispose of packaging in accordance with statutory requirements. Insofar as legally and commercially possible he shall use environmentally friendly products and processes for supplies including for the supplies of third parties. The Supplier shall be liable for the environmental compatibility of the goods supplied and packing materials and for all losses incurred by reason of a breach of his statutory disposal obligations.

In addition the Supplier shall provide us with a certificate of inspection for the goods delivered where requested.

### 12. Retention of Title and other Security Rights

We are entitled to use the goods supplied without restriction during the ordinary course of business and/or to resell the same.

### 13. Product Liability

In the event that a claim is asserted against us on the basis of product liability, the Supplier shall be required to

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indemnify us for such claims upon first demand where and insofar as the loss was caused by a defect in the contractual goods delivered by the Supplier and, in cases of liability with fault, if the fault is attributable to the Supplier. If the Supplier is responsible for the cause of the loss, the burden of proof shall rest with the Supplier.

In such cases the Supplier shall be liable for all costs and expenses, including the costs of any legal prosecution or recall action. For the remainder, the statutory regulations shall apply.

### **14. Tools/Drawings**

We retain exclusive rights to all molds, tools, reproductions, plans, samples, drawings, and such like (hereinafter referred to as tools), which are produced at our expense or which we place at the Supplier's disposal. Title thereto shall pass to us no later than on payment. The Supplier shall store, maintain and repair the tools without charge and shall insure and protect the same against unauthorized access, damage and destruction with the same degree of care as he would his own tools. The storage obligation shall expire 2 years after final use unless agreed otherwise. Upon the expiration of the storage period the Supplier shall at our option either return or scrap the tools. The Supplier shall have no right to withhold surrender of the tools.

The Supplier shall check any information supplied by us as to its completeness and accuracy and shall inform us of any errors without delay. Where there are errors in the documentation (e.g. drawings) any correction undertaken by the Supplier for which a charge shall be incurred shall be subject to our prior written consent.

Any machines and tools produced on the basis of documentation provided by us shall be used for the manufacture of our orders only or for supplies to us except where we have expressly consented in writing to their use for supplies to third parties.

### **15. Proof of Origin**

Where requested the Supplier shall provide us with all requisite documentation as to the origin of the goods. He shall be liable for the accuracy of the documentation and its verifiability by the proper authorities to the extent provided by law.

### **16. Third Party Property Rights**

The Supplier warrants that the products and services provided do not infringe any third party property rights (to include without limitation patents, samples, copyright etc).

In the event that we or our customer violates any third party rights when using the goods as provided for under the contract the Supplier shall immediately procure at its expense all requisite licenses for use of such third party rights from the owner.

The Supplier shall indemnify us and our customers against all third party claims based on violation of third party rights upon first demand. He shall reimburse us or our customers any expenditure incurred as a result of any such third party claim.

### **17. Place of Performance and Jurisdiction**

Unless otherwise agreed the place of performance for the Supplier's delivery obligation shall be location specified by us; for all other obligations the place of performance shall be our registered office.

### **18. Other Matters**

These terms and conditions shall be governed by the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).