



## **General Terms and Conditions of Purchase of SL Werkzeug KG Dated March 2012**

### **§ 1 Scope of application**

- (1) Our Terms and Conditions of Purchase shall apply exclusively; we shall not recognize any conflicting or deviating terms and conditions of the Supplier, unless we have expressly approved their validity in writing. Our Terms and Conditions of Purchase shall apply even where we accept delivery from the Supplier without reservation, having knowledge of conflicting or deviating terms and conditions of the Supplier.
- (2) These Terms and Conditions of Purchase shall also apply to all future transactions with the Supplier, insofar as these are legal transactions of a related nature.
- (3) All agreements made between us and the Supplier for the purpose of implementing these Terms and Conditions are stipulated in writing in these Terms and Conditions. Supplements, modifications or additional agreements must be confirmed in writing by us in order to be applicable.
- (4) Changes to these Terms and Conditions of Purchase shall be notified to the Supplier in writing. They shall be deemed approved, unless the Supplier makes a written objection. The Supplier must send the objection to us within 20 (twenty) working days after notification of the change.

### **§ 2 Ordering**

- (1) If the Supplier prepares a quotation on the basis of an inquiry by us, then the Supplier must adhere exactly to our inquiry and make explicit reference to any deviations from it. Such deviations shall only be deemed accepted if confirmed in writing by us as an addition to our Terms and Conditions of Purchase. The basic principles relating to silence with respect to a letter of confirmation shall generally be excluded.
- (2) Our written order (particularly by letter, email, fax, supplier portal, EDI) shall be decisive for the scope of performance.
- (3) We shall expect an order confirmation within three days. If the Supplier does not accept the order within seven days of receipt, then we shall be entitled to cancel the order, without any obligation to pay compensation. Delivery schedules shall become binding at the latest if they are not rejected by the Supplier within three working days of receipt. In the case of orders without an agreed price, a contract shall only be concluded once we have confirmed the price in writing.
- (4) The order acceptance must be submitted in writing (letter, email, fax, supplier portal, EDI etc.) to the Purchaser; the onus of proof shall be borne by the Supplier. Such proof must show all the essential data of our order (particularly our order number, name of the purchasing representative).
- (5) We may, within reasonable limits for the Supplier, request changes to the design and execution of the delivery item. The consequences of such changes, in particular with regard to increased or decreased costs and delivery dates, shall be agreed amicably.
- (6) The preparation of quotations is free of charge for us and binding for the Supplier.
- (7) If we can prove by submitting a transmission report that we have sent a declaration by fax or remote data transfer, it shall be assumed that the Supplier has received the declaration.

- (8) Transfer of our orders, together with the associated rights and obligations, is only permitted with our express written approval.
- (9) Correspondence shall be conducted with our Central Purchasing Department. Agreements with other departments require express formal confirmation by Central Purchasing to be binding.
- (10) By accepting our order the Supplier guarantees, for a period of 10 years, that any spare parts or components required can be supplied ex-stock and at short notice.

### **§ 3. Prices, terms of payment**

- (1) The prices are fixed prices. They are "carriage paid" (DDP in accordance with Incoterms 2010), including packaging and the necessary transport equipment. The statutory VAT is not included in the price.
- (2) In the case of an "ex-works" agreement in individual contracts (EXW in accordance with Incoterms 2010), the Supplier shall deliver the goods to us through our contract carrier, immediately after completion of the same.
- (3) In the absence of other agreements or more favorable terms of the Contractor, payments shall be effected within 14 days with a 3 % discount, within 30 days with a 2 % discount, or within 60 days net, subject to defect-free delivery, in compliance with our payment schedule.
- (4) Payment and cash discount periods shall commence from receipt of invoice, but not before receipt of the goods or, for services, not before their acceptance and, insofar as documentation, inspection documents (e.g. factory certification) or similar documents are included in the scope of services, not before their handover to us in accordance with contract. If deliveries are made before the agreed delivery dates, the payment and cash discount periods shall only commence on the agreed delivery date.
- (5) Unless expressly agreed otherwise, we shall make payments in euros free the Supplier's domestic bank account.
- (6) Payments shall be made by means of bank transfer. The payment shall be deemed to be on time if the bank has been instructed of the transfer on the due day.
- (7) The Supplier must notify Central Purchasing of price increases with advance notice of three months. Such increases must be approved in writing by Central Purchasing.
- (8) If market prices decrease, then the agreed prices shall be decreased accordingly. If the Supplier reduces its selling prices, then this reduction shall be granted to us for all goods not yet delivered. If a price reduction becomes possible on account of the market situation or for other reasons, then this must be passed on to us in full.
- (9) Interest counting from the due date may not be applied. The default interest rate is 5% points above the base interest rate. In any case we shall be entitled to prove a lower damage caused by default than that claimed by the Supplier. The payment period shall commence as soon as the delivery has been effected in full and the correct invoice has been received.
- (10) We shall have the right to refuse performance up until submission of the correct invoice. The actual quantities, weights or other units on which delivery is based as well as the agreed prices shall be decisive for the payment.
- (11) Settlement of an invoice does not imply acknowledgement of the delivery as being in compliance with the contract and, in particular, does not constitute waiver of any claims for defects in respect of the goods invoiced. In the case of defective delivery, we shall be entitled to withhold payment to the extent of the defective goods until proper fulfillment of contract. We shall be entitled to further rights of offsetting and retention within the limits of the statutory regulations.

- (12) The Supplier shall not be entitled to assign its claims against us or have these collected by third parties without our prior written consent.

#### § 4 Delivery

- (1) Agreed delivery dates and terms shall be binding. Non-compliance with delivery terms or other dates shall entitle us, without notice of default or setting a period of grace, to withdraw completely or partially from the contract (without compensation) and/or to claim compensation for damages on account of non-performance. Insofar as acceptance is required, the Supplier shall be in default without reminder if the Supplier has not provided the performance on the agreed date or only in such a way that acceptance can be refused. The Supplier shall notify us immediately of imminent delays in delivery, stating the reasons and the likely duration of the delay. At the same time the Supplier shall provide suitable countermeasures, in order to avert the consequences of such delay. The agreed delivery time shall not be extended by this information.
- (2) If the Supplier is in default of delivery, the Supplier shall be obliged to exempt us from all resulting costs. We shall be entitled to the statutory rights. In particular, we shall be entitled to claim compensation for damages instead of delivery. In addition, we shall be entitled to withdraw from the contract. The acceptance of a delayed delivery shall not constitute waiver of claims for compensation. In the event of repeated default in delivery we shall be entitled, after prior warning, to completely cancel the orders not fulfilled at this time with immediate effect.
- (3) Irrespective of this, we shall be entitled to claim from the Supplier, from the time of the default in delivery, a contractual penalty of 1.0% for each week begun, but up to a maximum of 10% of the complete order value of the delivery. The right to assert further damages is expressly reserved.
- (4) Additional costs for an accelerated shipment necessary to comply with the delivery date shall be borne by the Supplier.
- (5) Receipt of goods shall only be effected during normal business hours. We shall be entitled to specify a limited time window for deliveries by the Supplier. In the event of delivery to an incorrect delivery address, a flat rate compensation for expenses of 100 EURO will be charged. The Supplier shall be free to prove lower expenses.
- (6) We shall only accept the ordered quantities or amounts. Over-deliveries of up to 10% (ten percent) and under-deliveries of up to 5% (five percent) can be permitted in individual cases, by prior arrangement with Central Purchasing. If such delivery is rejected, the Supplier shall reimburse all incurred costs.
- (7) Partial deliveries are only permitted with our express consent; otherwise all costs for additional deliveries shall be borne by the Supplier. If these regulations are not complied with, the invoices shall be deemed not received until receipt of an adjusted copy or until final clarification. We reserve the right to make the value date the date on which the correct invoice is received, or the date of final clarification. If partial deliveries are agreed, the remaining amount must be itemized.
- (8) If delivery is made earlier than agreed, we reserve the right to return the said delivery at the Supplier's costs. If a premature delivery is not returned, the goods shall be stored by us at the Supplier's costs and risk until the agreed delivery date. We reserve the right to make payment only on the agreed due date in the event of premature delivery.
- (9) Force majeure, industrial action, non-culpable disruption of operations, unrest, official measures, market circumstances and other unavoidable events shall release the contracting parties from their contractual obligations for the duration of the disruption and to the extent of its effect. The contracting parties shall be obliged, within reasonable limits, to provide the required information without delay and to adapt their obligations to the altered circumstances in good faith. We shall be completely or partially released from the obligation to accept the ordered delivery and, to this extent, entitled to withdraw from the contract, if we are no longer able to use the delivery - taking account of commercial aspects - on account of the delay caused by the above-specified reasons..
- (10) Delivery notes, invoices (each provided in two copies and clearly marked as such) and all correspondence must contain our order number and the name of our purchasing representative. Our article

numbers must be specified on delivery notes, invoices and quotations.

- (11) The Supplier may only invoke the absence of necessary documents to be provided by us if the documents have not been received even after a written reminder.
- (12) The Supplier shall bear the risk of accidental destruction or deterioration until handover of the goods at the point of destination. The Supplier must have adequate transport insurance and provide us with proof of this insurance cover on request.
- (13) Goods shall be packaged in such a way that they comply with the required conditions (IPPC standard, ISPM 15) and transport damages are avoided. The Supplier shall be liable for damages due to defective packaging. Packaging materials shall only be used to the extent necessary to fulfil this purpose. Only environmentally-friendly packaging materials may be used. The Supplier's obligation to take back the packaging is based on the legal requirements. If, as an exception, we are invoiced separately for packaging in accordance with prior written agreement, we shall be entitled to return packaging in good condition carriage-free to the Supplier, for a remuneration of 2/3 of the value shown on the invoice.
- (14) If we expressly agree to the use of the Supplier's own durable packaging, this must be clearly and permanently identified by the Supplier's company name and registered office. In such cases a credit for 2/3 of the calculated value must be provided on return of the packaging. The return shall be at the Supplier's costs and risks. The Supplier shall arrange for the available empties to be collected by the Supplier's shipper. If the empties are not collected despite two requests to the Supplier or shipper, the empties shall be returned at the Supplier's costs, by a transport company of our choice. Decreases in value due to normal wear shall be borne by the Supplier.
- (15) If the Supplier's financial situation deteriorates during the period of the order to an extent that the fulfillment of the contract is seriously jeopardized, if the Supplier suspends its payments (even temporarily) or if an application is made for the institution of bankruptcy proceedings or for the commencement of legal or out-of-court composition proceedings, then we shall be entitled to withdraw from the contract with respect to the part which has not been fulfilled. We shall be entitled to withdraw from the contract completely insofar as partial fulfillment is of no interest to us.

#### § 5 Warranty

- (1) The specification agreed upon shall be an integral part of the contract and may only be amended by mutual consent. Any description, drawing or other document to be considered as binding shall also be deemed to be a specification.
- (2) The Supplier shall supply the goods free from defects. The Supplier shall also in particular guarantee that its deliveries and services comply with the acknowledged rules of science and technology (safety guidelines, accident prevention regulations, CE etc.), the valid safety regulations and the contractually agreed properties, purposes and standards. The Supplier undertakes to use ecologically sound products and processes in its deliveries and also for subcontracted work or ancillary services of third parties, within the scope of economic and technical possibilities. The Supplier shall be liable for the environmental compatibility of the products delivered and the packaging materials as well as for all consequential damages caused by a violation of the Supplier's statutory disposal obligations. At our request, the Supplier shall issue a certificate of inspection for the goods delivered.
- (3) We shall inspect the goods for any obvious quality and quantity deviations within a reasonable period; the notification of defects shall be deemed to be submitted on time provided it is sent to the Supplier within a period of 15 working days starting from receipt of goods or, in the case of hidden defects which are not detected during the incoming goods inspection, from the time of their discovery. If the goods are delivered directly to our customer, this period shall be extended by a further 15 working days. Insofar the Supplier expressly waives the objection of delayed notification of defects.
- (4) If the goods have a defect, then we shall be entitled to the statutory rights at our option. In particular, we shall be entitled to request replacement delivery and compensation of the necessary expenses, including any inspection costs. If the Supplier does not rectify the defect or provide additional delivery or only does so inadequately or in urgent cases, we may, at the Supplier's costs, eliminate the defect ourselves, have it eliminated by third parties or make covering purchases. A rectification of defect by the

Supplier shall be deemed to have failed after the first unsuccessful attempt. The defect must be remedied within a reasonable period of time. We shall be entitled to withdraw from the contract even if the relevant breach of duty by the Supplier is only minor. The right to compensation for damages, in particular the right to compensation for damages instead of performance, is expressly reserved.

If we have to completely or partially reject delivered items due to non-compliance with our terms and conditions, the Supplier must leave such items with us - without any claim to remuneration - for further use, until the provision of a reasonable replacement.

- (5) If a goods inspection beyond the usual scope (incoming and return inspection) is required as a result of defective delivery), the Supplier shall bear the costs. The Supplier shall bear the costs and risk of sorting, return and/or scrapping of defective delivery items.
- (6) The statutory periods of limitation shall apply. These shall commence with timely notification of defects in accordance with no. (3) above. The liability for defects shall end at the latest ten years after delivery of the goods (exception: consequential damages caused by defects, tortuous claims for damages). This limitation shall not apply insofar as our claims are based on facts which were known or must have been known to the Supplier, and which the Supplier did not disclose to us. If acceptance is delayed without this being the fault of the Supplier, the warranty period shall commence at the latest 12 months after the delivery item has been made available for acceptance.
- (7) For delivery parts which could not remain in operation during the inspection of the defect and/or the remedying of the defect, the running warranty period shall be extended by the time of interruption of operation. For any repaired or newly delivered parts the warranty period shall recommence from this time onwards.
- (8) The Supplier shall transfer to us immediately – on account of performance – all claims to which it is entitled against its preliminary suppliers on account of and in connection with the delivery of defective goods or goods that lack promised or guaranteed properties. The Supplier shall provide us with all necessary documents for asserting such claims.
- (9) Our payment does not imply that we acknowledge the delivery as being contractually compliant or free from defects.
- (10) Our acceptance of the Supplier's technical documents and/or calculations shall not affect the Supplier's liability for defects.
- (11) The above regulations shall not affect our further statutory rights.

#### **§ 6 Execution of work**

Persons who carry out work on the factory premises in fulfillment of the contract must observe the respective factory regulations (in particular the industrial safety and environmental protection leaflet for outside companies, in the respectively valid version). Liability for accidents which befall these persons on the factory premises is excluded, unless they have been caused by wilful or grossly negligent breach of duty by our legal representatives or vicarious agents.

#### **§ 7 Product liability**

- (1) Insofar as the Supplier is responsible for damage caused by a product, the Supplier shall be obligated to indemnify us against or compensate us for any damage compensation claims (including consequential damage caused by a defect) by third parties upon first request, as far as the cause is within the Supplier's sphere of control and organization. This damage also includes the costs of any necessary recall action. If a defect occurs in a part delivered by the Supplier, it shall be assumed that the defect has occurred solely within the Supplier's sphere of responsibility.
- (2) The Supplier is required to take out adequate insurance against all product liability risks including the risk of recall, and to provide us with proof of such insurance on request. If we are entitled to further damage compensation claims, these shall remain unaffected.
- (3) Insofar as the Supplier is responsible for the safety of the product and/or its conformity with regulations under public law, the Supplier shall be obligated to indemnify us against all consequences resulting from inadequate product safety or conformity. Further claims remain unaffected.  
If required, the Supplier shall provide a CE declaration of conformity together with delivery of the goods. In the event that the customer requests presentation of the documents named in the CE declaration of conformity, the Supplier guarantees us access to and surrender of these documents.

#### **§ 8 Industrial property rights**

- (1) The Supplier shall guarantee that no rights of third parties will be violated as a result of delivery.
- (2) The Supplier shall, upon first request, indemnify us and our customers against all claims (damages and consequential damages caused by defects) by third parties due to violations of industrial property rights and shall bear all of our costs in this connection.
- (3) We shall be entitled, taking into account the diligence of a prudent businessman, to obtain consent from the entitled party for use of the relevant delivery items and services, at the Supplier's costs.
- (4) The Supplier shall be prepared, at our request, to take part in any legal dispute at the Supplier's costs.
- (5) The period of limitation is twenty years, starting from contract conclusion or product modification, updating or replacement.

#### **§ 9 Software, rights of use**

- (1) Software shall be provided on standard data carriers in machine-readable code, as well as user documentation.
- (2) Software individually developed for us shall also be provided in source code with manufacturer's documentation. Copies of source code and manufacturer's documentation shall be handed over to us at acceptance, and must comply with the program version at the end of the test phase.
- (3) Measures implemented within the scope of liability for defects in the software shall be applied promptly to the source code and manufacturer's documentation by the Supplier; a copy of the updated version shall be made available to us immediately.
- (4) We shall irrevocably acquire an exclusive right of use, unlimited in terms of time and place, in respect of software developed for us or parts thereof and in respect of all other performance outcomes, encompassing all known types of use including the right to adapt, reproduce, alter and expand these, and the right to grant simple rights of use to third parties, unless a restriction is contained in the following paragraphs.
- (5) If the acquisition of a right of use in accordance with the previous paragraph is opposed by rights of third parties in third-party programs or other third-party performance outcomes incorporated into the performance, the extent of our right of use shall be agreed accordingly in the contract.
- (6) The Supplier shall remain authorized to continue using related standard programs, program modules, tools and know-how introduced by the Supplier when developing the performance outcomes, for orders of third parties. The Supplier shall not be permitted to reproduce, process or otherwise use the performance outcomes and solutions developed for us, in whole or in part.
- (7) The Supplier shall only be entitled to publish performance outcomes of any type developed for us - including parts thereof - with our written consent.

#### **§ 10 Retention of title**

- (1) The goods shall become our property upon delivery. Items which are manufactured or further processed by the Supplier completely or partially at our costs shall become our property upon manufacture. We shall be entitled to request free allocation if the Supplier has production or supply difficulties. Extended forms of so-called current account and group retention of title as well as extended retention of title or so-called retention of title to processed goods by the Supplier shall not apply.
- (2) Parts and/or materials provided by us shall remain our property. The materials provided by us must be identified and stored separately. They must be adequately insured against fire, water, theft and other damages at the Supplier's expense. Proof of such insurance must be provided on request. Such parts/materials may only be used for the intended purpose. The Supplier shall process and combine such parts on our behalf. We shall become the direct owner of transformed or new objects. Should this be impossible for legal reasons, we and the Supplier agree that we shall become the owner of the new object as soon as manufacture is complete. The Supplier shall maintain custody of the new object for us with the diligence of a prudent businessman.
- (3) We shall retain title to tools and/or models belonging to us. The Supplier may not transfer tools and/or models abroad or pass them to third parties without our written consent. The Supplier shall be required to use tools and/or models belonging to us exclusively for the manufacture of the goods ordered by us.

### **§ 11 Technical documentation, manual**

- (1) The supply of the technical documentation and all required records must be an integral part of the main supply.
- (2) The technical documentation must be compiled in conformity with the current EC Directives (e.g. EC Machinery Directive) and DIN ISO standards and comply with all acknowledged rules of technology.
- (3) The technical documentation shall be provided as follows: A4 and A3 format in digital form as data carrier. Larger formats and special formats in paper form. The digital data must be provided in unprotected form. If "Adobe PDF" format is used, no file protection that will impede integration into our general documentation may be activated. All fonts used must be embedded in the document.
- (4) Due to the complexity of the documents, defects may only be discovered some time after commissioning the system. The Supplier shall promptly make corrections to the documents even with such delayed notification of defects.
- (5) The technical integration of the supplied documentation into the general documentation shall not release the Supplier from its liability for the completeness and correctness of its documents.
- (6) For delivery items whose handling is not generally known, installation and operating instructions must be automatically provided in two copies 2 weeks before delivery at the latest. Otherwise the Supplier shall also be liable for damages resulting from incorrect operation or handling.

### **§ 12 Confidentiality**

- (1) The Supplier must keep the contract conclusion together with all resulting or received commercial and technical information and/or data confidential.
- (2) The Supplier shall be required to keep all received illustrations, drawings, calculations and other documents and information strictly confidential. These may only be disclosed to third parties with our express consent. The confidentiality obligation shall also apply after execution of this contract; it shall lapse when and insofar as the production knowledge contained in the provided illustrations, drawings, calculations and other documents has become common knowledge.
- (3) Objects which we have developed or further developed together with the Supplier may only be supplied to us.
- (4) Subcontractors must be obligated accordingly.

### **§ 13 Proof of origin, customs, hazardous goods**

- (1) The Supplier must specify and regularly update the origin of the goods, the customs tariff number and, if applicable, the hazardous goods designation of each article provided by the Supplier (quotation, acceptance, order confirmation, delivery note, invoice). The Supplier shall be liable for the correctness of this information. Any changes to the hazardous goods designations must be notified in writing. Changes to the origin of goods and the customs tariff number must also be notified promptly in writing. However, as these generally indicate changes in the guaranteed properties of the goods to be supplied, our written consent is required for the supply of goods whose origin and/or customs tariff number change. Consent may be refused without specifying reasons. Articles whose origin of goods or customs tariff number has been changed may not be delivered to us without our approval.
- (2) The Supplier shall be required to enable inspection of these certificates of origin by the customs authority, providing the necessary information and any confirmations required.
- (3) The Supplier shall be required to provide compensation for any damages resulting from non-recognition of the declared origin by the relevant authority, on account of incorrect certification or inadequate opportunity for verification.
- (4) The Supplier shall bear all customs charges, taxes, duties and costs incurred by import in relation to the order.
- (5) In the case of deliveries from an EU country outside Germany, the EU VAT identification number must be provided.
- (6) Imported goods must be delivered duty-paid. The Supplier shall be required, at its own costs, to provide any required declarations and information, to arrange inspections by the customs authority and to provide any necessary official confirmation.
- (7) The Supplier shall be required to inform us of any obligations to obtain a permit for (re-)exports in accordance with German or other export and customs regulations.

### **§ 14 Final provisions**

- (1) The place of performance for deliveries shall be the place of destination specified in the order, or alternatively our head office. The place of performance for payments shall be Albstadt.
- (2) The place of jurisdiction shall be our head office. However, we shall also be entitled to bring an action against the supplier at any other justified place of jurisdiction.
- (3) The law of the Federal Republic of Germany shall apply, with the exclusion of the conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods.
- (4) In the event of single terms of these Terms and Conditions or the contract concluded between ourselves and the Supplier being or becoming invalid, all other conditions will remain effective.
- (5) The Supplier is herewith made aware that inclusion of our company in the Supplier's reference lists or company brochures requires the express written consent of our Central Purchasing Department.
- (6) The Supplier is herewith advised that any personal data will be stored and processed by us and associated companies in accordance with BDSG (Federal Data Protection Act) regulations. We are furthermore entitled, on the basis of the BDSG, to add selected creditor data to associated data pools for the purpose of credit checks.