

## General Purchasing Terms and Conditions – February 2014 issue

### 1. General

All of the current and future orders are in accordance with the present "General Purchasing Terms and Conditions", as long as such rules and restrictions are not made void by separate written agreement. These rules and restrictions are also in effect for any future contracts between SGS Industrial Services and our suppliers (purchasing contracts, contracts for work and services, rent contracts, assignment of employment, etc.). Terms and conditions not specifically mentioned in this contract are not valid and hereby void. Special contract provisions between us and suppliers concerning supply terms are not necessary. These purchase conditions are also published on [www.sgs-industrial.com](http://www.sgs-industrial.com) and should be reviewed by suppliers.

### 2. Orders

All orders, as well as all change orders, are only binding if and when they are in written form or confirmed in writing (email, mail or fax). Contracts are deemed enforceable after there has been a retransmission to SGS Industrial Services of the contractual agreement, or the transmission of an acceptance confirmation of the order. If a contractor does not accept the order or the contract in full within two weeks after the contract is transmitted by us, then we assume no liability under the purported contract and can withdraw it. In the case of the absence of a retraction by us and the contractor does not respond to an order, the order is regarded as accepted in full by the contractor. Changes to our orders are only effective with an explicit written agreement by us. Supplier terms and conditions are only binding upon us with our written consent.

### 3. Prices and packaging

In the absence of other agreements, the designated prices are considered to be fixed prices and DDP in accordance with INCOTERMS 2010 as stipulated. All prices are net prices. The goods – unless special agreements have been made or other controlling law applies – are to be packaged in a routine and customary manner which will maintain the integrity of the shipped good, and keep it from injury, damage or harm and in excellent condition. For packages or materials forwarded to us, these materials are thus transferred into our ownership, without the need for special agreement. The return of the packaging, if such occurs, will happen at the expense and liability of the contractual partner.

### 4. Delivery dates and deadlines

Dates and deadlines that have previously been agreed upon are considered fixed. The timetable of delivery at the designated delivery address is the most important factor in determining if a party has abided by its contractual obligations to comply with delivery dates and deadlines. When a deadline or a delivery date is not met, we are entitled to decide whether to retract from the whole order or the missing part of the order without setting a secondary deadline, or to await completion of the order. In the case of a partial retraction by us, an appropriate partial payment would be due. If compliance with a delivery date is in jeopardy, the supplier is obligated to inform us about the duration of the delay, and the reason for the delay. In this case we are also entitled to retract from the contractual agreement without waiting for the scheduled delivery date. Even if we agree to

reschedule the delivery date, we are entitled to a penalty payment of 1% of the gross value of the order per working day past the originally scheduled delivery date, with a maximum of 10% of the total gross value of the order. We regard this penalty as a minimum compensation for the damage and harm done by the contractor, and therefore, we reserve the right to demand additional compensation if the damage caused by the delay exceeds the paid penalty. Partial deliveries, and deliveries in advance will require our written consent, although in this case it's not required to pay in advance as well. The liability for the cost of goods for deliveries in advance does not transfer over before the original delivery date. Delivery commitments are not deemed fulfilled, even in the case of partial deliveries, until the order has been delivered as a whole. This includes the transmission of all necessary and requested documents and reports. The delivery or service has to be made on the agreed upon date at the appointed location to the responsible contact person. The delivery times are Monday through Thursday, 8:00 AM to 12:00 PM and 1:00 PM to 5:00 PM, and Fridays from 8:00 AM to 12:30 PM. For deliveries made before the appointed delivery date, we reserve the right to charge the client with any resulting additional cost to accept such delivery, including storage, etc.

### 5. Shipping

If our contract partner uses a third party for purposes of subcontracting, shipping, expediting or any other reason, third party compliance with our shipping terms and conditions must be reliable and assured. For air freight, two shipping notes, made out to the requested delivery address, are to be attached to the waybill upon dispatch of the order. For mail deliveries, such documentation shall be included in the order (bulk goods excluded) and in case of freight forwarding the documentation shall be handed over to the forwarder and labeled "intended for the recipient". The entire order number and project or cost center number has to be added to the waybill, and the shipping documents intended for the recipient and on the parcels (signature, adhesive label) presented in a clearly visible manner. Also included in all waybills, receipts etc. should be the weight of the order, which has to be indicated (gross- net weight), as well as the article number. If a item number is present in the order, it has to be present on every document and every part of all waybills. For trans-border shipments from non EU member states, two invoices as well as the movement certificate or the certificate of origin are to be added to the waybill or sent to the receiving plant, labeled "für Zollwesen" via express shipping, early enough to be available by the time the shipment is being delivered. For shipments originating in EU member states, a "supplier declaration" has to be added to the waybill. We only cover the cost of shipping insurance if such coverage is explicitly agreed upon. Unless otherwise contractually stipulated, all related cost of shipping is covered by the supplier. In addition, it is noted that – depending on the individual case – separately imposed regulations, rules and restrictions by customs are regarded as integrated into our purchasing restrictions. When our shipping, customs and documentation requirements and regulations as well as any other regulations and requirements are not met, the supplier is liable for all resulting risk, damages and cost. Furthermore, the payment deadline automatically gets extended until all of the required regulations and requirements are met and /

or the required documents are presented.

#### **6. Take over**

The handover of the shipment takes place at the delivery address as stated in the order. The supplier refrains from examination of the goods or undertaking any process to check for deficiencies. We only check the goods to confirm accuracy and identification in relation to the ordered goods, their amount, and if there are any clearly visible damages caused by transportation. Deliveries do not count as accepted until we have explicitly confirmed them in writing.

#### **7. Behavior at the company- or construction site**

Within the entire company site of SGS Industrial Services as well as other company construction sites, local driving laws are in effect and parking is only permitted in designated parking areas. In and around the whole property, filming, or the taking of any photographic images of any kind and the disposal of trash is prohibited. Theft or damaging of company property will be reported to the local authorities. Drivers are advised to avoid and report unsafe situations as well as accidents during the duration of their stay. The rules and restrictions regarding personal safety equipment must be followed at all times. This information has to be extended to all related employees.

#### **8. Transfer of risks**

The risk of liability is thereafter transferred to SGS Industrial Services upon the proper receipt of goods at the delivery site.

#### **9. Warranty**

The contract partner fully guarantees and insures the perfect condition and flawless state of the goods. All technical regulations have to be followed. The warranty period of the supplier for movable objects is 24 months, and for immobile objects 3 years from the date of proper acceptance or usage begins. For hidden flaws in delivered goods the warranty begins with the discovery of the flaw. For goods that commonly remain packaged until used, flaws that are not visible until the packaging is removed are considered hidden flaws. It is suspected that flaws that appear within the first 12 months of usage have been present from the time of delivery. We exclusively retain the right to request the change of a contract, product exchange, lowering of a price or improvement of a product. In certain classes of products the occurrence of flaws in samples warrants damage and warranty claims for the whole delivery. Unrelated to our other warranty and guarantee rights, we are entitled to hire a third party for the purpose of damage repair, if the supplier does not admit to and provide compensation for his liability within the time necessary for us. In such a case, the overall liability of the supplier is not affected. As such, the supplier is liable to cover the cost of all damages caused by flawed delivered goods, including any and all lost profits suffered by our company. Included in the damages for which supplier would be liable is also all of the costs, fees and expenses necessary to pursue this matter against the supplier either through litigation or pre-litigation, including but not limited to the cost to detect said damages, the cost to pursue said damages including any and all expert testimony and participation that may be required. The contract partner is also liable for minor acts of negligence.

#### **10. Product liability**

The supplier is responsible for its own liability, as well as the liability of its legal successors that the delivered products are flawless in terms of construction, production and instruction, and in compliance with valid and lawful Austrian product liability law at the time. The supplier guarantees in particular that no flaws have been detected within the product, based on the state of technology and science at the time of placement on the market. Therefore, the supplier and legal successors commit to product observation. The supplier is obliged to inform us about any dangerous traits that may be detected later. In case of claims made by third parties, the supplier commits to keeping us free of any responsibility for damages and demands for indemnification. Furthermore, the supplier commits to our demand of holding manufacturers and importers as well as his pre-suppliers liable. The supplier has to ensure that possible liability claims can be paid, in the form of insurance that covers such claims.

#### **11. Invoices**

All invoices are prepared in a single copy containing our purchase order- and project number or cost center number made out to SGS Industrial Services. The invoices have to contain all necessary information in compliance with § 11 öUSTG. Within the framework of the legal provisions, the electronic transmission of invoices to [finance@sgs-industrial.com](mailto:finance@sgs-industrial.com) is feasible.

#### **12. Terms of payment**

Unless otherwise stipulated, we will submit payment within 30 days with a 3% discount, or a net payment within 60 days of receipt of an invoice. Cash on delivery parcels are not accepted unless such payment was previously agreed upon in writing. Payment deadlines, especially discount deadlines, begin with the date of receipt of invoice. If we require time to prepare an objection to goods received, this entitles us to postpone the payment deadline.

#### **13. Order documents**

All attachments, materials etc. either documentary or digital, or any other kind that are attached to our orders or inquiries shall remain in our possession and may not be used in any way without our written consent; they are to be sent back to us at the expense of the contract partner upon inquiry or unrequested after the finished orders. The disclosure of our order for promotional purposes is not permitted. Our orders and all related business and technical details are to be treated with extreme confidentiality and as a business secret by the supplier. Therefore, the supplier is liable for all damages that may result from the infringement of these confidentiality and secrecy obligations. We do not cover any cost for the development of proposals, the creation or alteration of plans or any other preliminary preparation in advance of a contract, whether said contract is ultimately agreed upon by us or not. The transmission of proposals includes the permission to transmit technical proposal documents and other materials for technical assessments to engineering partners and other necessary parties. We will not return proposal documents. All fees and other cost resulting from our orders are at the expense of the supplier unless otherwise stipulated.

#### 14. Miscellaneous

We are entitled to inspections and ongoing checks of the process of production of orders placed by us, including the rejection of parts as early as during the production phase. The possible involvement of sub-contract partners in relation to the implementation of orders placed by us requires our consent, as well as the partial or complete transfer of our orders to third parties. If, after the placement of an order, a significant deterioration of a supplier's financial condition occurs, we are entitled to withdraw from the contract within one week after notice.

#### 15. Compensation and retention

We reserve the right to offset possible liabilities of SGS Industrial Services and our associated companies with claims by suppliers. The supplier does not have the right to retain goods based on any asserted claim or legal ground which may be presented. The supplier is also not entitled to offset claims against us with claims against the supplier.

#### 16. Place of fulfillment

The place of fulfillment of services as well as for payment is 4751 Dorf an der Pram, unless a different place of fulfillment was explicitly stipulated in writing.

#### 17. Patents and copyrights

The supplier is responsible to ensure that no patents or other copyrights of third parties are infringed upon by the supplier's delivery or through our use of the delivered goods. The supplier ensures and promises to indemnify us and keep us free from legal, financial or other harm.

#### 18. Place of jurisdiction, applicable law

Any and all contractual relationships are subject to Austrian Law,

excluding all collision- and reference norms (such as EVÜ, IPRG). It is explicitly understood and registered that the CISG does not apply to this contractual relationship. If the contractual partner of SGS Industrial Services is based in a country for which the act (EG) No. 44/2001 of the council from 12/22/2000 (EuGVVO) or the Lugano-Convention (LGVÜ) are applicable, then all disputes directly or indirectly based on the contract with the supplier are settled in the jurisdiction of the court factually and regionally responsible for Dorf an der Pram/Austria (Bezirksgericht Schärding and/or Landesgericht Ried im Innkreis). We are also entitled to choose another court responsible to hear disputes involving our contractual partner. For all other contract partners, all disputes related to or based on this contract are conclusively settled in compliance with the Rules of Arbitration and Conciliation by the Vienna International Arbitral Centre. However laws and provisions relating to the Austrian material right are exclusively in effect. The language to be used during arbitral procedures is German.

#### 19. Effectiveness

If certain individual terms and conditions of these Purchasing Conditions are or will be void, then all other conditions of these Purchasing Conditions remain intact and in effect. If there is any doubt as to meaning or translation between the English and German version of the contract, only the German version stating these Purchasing Terms and Conditions is in effect and thus controls.

#### 20. Correspondence

Our order- and project number or cost center number has to be present on all order-related documents, especially invoices. Otherwise, we are entitled to defer them without processing, and they are categorized as "not received" during any period of doubt. Commercial queries are to be exclusively directed towards our procurement department.