

## **General Terms and Conditions of Purchase of Siloanlagen Achberg GmbH & Co. KG**

- for use in business transactions with companies -

### **1. Scope of application**

- 1.1 These Terms and Conditions of Purchase shall apply to all deliveries and services of all kinds procured by Siloanlagen Achberg GmbH & Co. KG or companies affiliated with it in terms of corporate law (hereinafter: 'the Client') from other companies (hereinafter: 'the Contractor'); they also apply to the obtaining of quotes, irrespective of whether they are accepted. For construction services, the statutory provisions apply to the exclusion of the German Construction Contract Procedures, Part B, [VOB/B].
- 1.2 These Terms and Conditions of Purchasing apply exclusively; conflicting or deviating terms and conditions of the Contractor shall apply only if the Client has expressly agreed to them. These Terms and Conditions of Purchasing shall apply also if the Client accepts the Contractor's performance without reservation despite being aware of conflicting or deviating Terms and Conditions of the Contractor.
- 1.3 Amendments, variations and addenda to these Terms and Conditions of Purchasing shall be made exclusively by the managing director(s) or holders of powers of procurement of the Client (Management) registered in the commercial register. Oral agreements and declarations by other persons who have not been granted special authorisation for such purposes by the Management shall be valid only if these have been confirmed in writing by the Management.
- 1.4 All legal transactions between the Client and the Contractor are hereinafter referred to as the 'Contract', irrespective of their legal qualification as a purchase contract, service contract, contract for works or other type of contract.

### **2. Offers, offer and contract documents**

- 2.1 The Contractor's offer must comply with the specifications stipulated by the Client in its request for an offer. In compiling the offer, the Contractor must also examine if a technically or economically more advantageous solution is available for the purpose underlying the request for an offer. If appropriate, the Contractor shall also submit an offer for that solution. The Contractor's offer must indicate all variations from the request.
- 2.2 In the absence of a separate and express agreement, no remuneration shall be charged for the preparation of quotations and quotations
- 2.3 The Client reserves all property rights and copyrights in illustrations, drawings, calculations and other records provided by the Client to the Contractor for the preparation and performance of the offers.

The aforementioned documents may be used only for the production of the order of the Client; they must be returned to the Client without prompting after the completion of the order. The documents must be kept confidential vis-à-vis third parties, see in this regard also para. 17.

Furthermore, also records relating to the offer prepared by the Contractor may not be made accessible to third parties without the express consent of the Client.

- 2.4 The Contractor must state the order or contract number of the Client provided by the latter on all records relating to the offer and/or the contract.

### **3. Award of contract, orders**

- 3.1 Unless otherwise provided in the order, the Contractor must accept the order within a period of one week, starting with the receipt of the order by the Contractor. Otherwise, the Client shall no longer be bound by its order.
- 3.2 The Contractor must inspect the order without undue delay and point out any evident errors, imprecisions or gaps and inform the Client about necessary changes or clarifications. The same applies if the ordered performance is not suitable for its contractually agreed purpose.

### **4. Indemnification for claims based on advertising of the Contractor**

The Contractor shall indemnify the Client for all claims asserted by a customer of the Client based on advertising claims made by the Contractor, the manufacturer pursuant to section 4(1) or (2) of the German Product Liability Act or of a vicarious agent of one of the above and without which, the claim asserted would not exist or not exist in the asserted amount. This provision applies irrespective of whether the advertising claim was made before or after conclusion of the agreement.

### **5. Changes; reservation of right of termination**

- 5.1 The Client is entitled to demand changes to the ordered performance at any time, even after the award of the contract. In this case, the Contractor is obliged to notify the Client without undue delay how the changes affect the technical execution of the performance, the time of performance and the agreed remuneration to permit the Parties to reach agreement on these matters. Changes are to be implemented only when the Client has placed an order for the modified performance and if such order has been accepted by the Contractor; para. 3.1 above shall apply mutatis mutandis.
- 5.2 The Client is entitled at any time to cancel entirely or in part any orders placed. In this case, the Contractor may demand the agreed remuneration pursuant to sentence 2 of section 649 of the German Civil Code [BGB]; however, the Contractor shall deduct the costs saved as a

result of the cancellation or by obtained (or maliciously failed to obtain) by other use of his workforce.

## **6. Payment terms**

- 6.1 The price stated in the order is binding and fixed. It includes all elements of the performance required by the Contractor to comply with his performance obligations. Unless otherwise agreed in writing, the price stated in the order shall be subject to INCOTERMS 2010 DDP ('delivered duty paid'), excluding VAT and including packaging; in the latter case, the Client shall be entitled to return the provided packaging free of charge to the Contractor.
- 6.2 Each invoice must include the information required by section 14 VAT Act and specify the order number of the Client stated in the order. The Contractor shall be liable for all consequences resulting from the failure to comply with this obligation, unless the Contractor demonstrates that the consequences are beyond its control.
- 6.3 Electronic invoices must include the information pursuant to para. 6.2. The Contractor shall send electronic invoices to the email address provided by the Client for this purpose. This email address is created only for the receipt of invoices and credit notes; any other documents sent to this email address will not be processed by the Client and have no legal effect. Each invoice may only refer to a single order of the Client. When transmitting an invoice by email, only one invoice may be sent per email; the invoice must be sent as a PDF file. Electronic invoices must be sent additionally by regular mail.
- 6.4 Unless otherwise agreed, invoices are due for payment within 14 days after delivery and receipt of the invoice, subject to an early-payment discount of 3 %, or net within 30 days after receipt of the invoice.
- 6.5 The Client shall be entitled to offset and exercise rights of retention rights to the legally permitted extent.

## **7. Scope of performance, modifications and spare parts**

- 7.1 The Contractor assumes strict and full liability - irrespective of fault - for the procurement of the services and the necessary supplies (full acceptance of the procurement risk).
- 7.2 The required performance of the Contractor also includes -
- a) procuring ownership in all technical documents relating to the performance (also from subcontractors of the Contractor) for the Client,
  - b) granting all spatially, temporally and materially unrestricted, non-exclusive rights of use in the objects forming part of the performance - to the extent that proprietary rights can be established in regard to those objects - to the Client; if the performance was created

individually for the Client, the Client shall be granted exclusive rights of use to the aforementioned extent,

- c) providing the data of the programmable logic controllers (PLC files) in plain text to the Client and
- d) warranting for the benefit of the Client that the requirements of the German Act on Employee Inventions have been complied with and that inventions are being used to the extent that they are relevant for the contractually agreed performance.

7.3 The Contractor is entitled to deviate from the agreed scope of performance if the Client has expressly consented in advance to the modification. This also applies to claims for additional costs asserted by the Contractor, e.g. due to an increased scope of performance. Para. 5.1 sentence 2 applies mutatis mutandis.

7.4 The Contractor shall ensure that they remain able to provide appropriate maintenance services and spare parts for all goods and services delivered for a period of 10 years since the transfer of risk for the performance.

## **8. Deadlines, delivery time, contractual penalty**

8.1 The time of delivery stated in the order shall be binding.

8.2 The Client is entitled to refuse any deliveries or services before the agreed date until the due date for the delivery or service.

8.3 The Contractor is obliged to notify the Client without undue delay if circumstances occur or become apparent that will prevent compliance with the agreed time of delivery.

8.4 In case of a delay in delivery, the Client is entitled to assert its statutory claims. The Client is in particular entitled to demand damages instead of performance and to rescind the order after the unsuccessful expiry of an adequate period. If the Client asserts a claim for damages, the Contractor shall be entitled to demonstrate that the breach of duty was beyond its control.

8.5 In case of a delay of delivery within the sphere of control of the Contractor, the Contractor undertakes to pay a contractual penalty in the amount of 0.5 % of the agreed net contract amount for each week or part of a week, limited, however, to 5 % of the net contract total. The right to assert further damages remains reserved. The Client reserves the right to assert the contractual penalty until the final payment.

**9. Delivery, transfer of risk, documentation**

- 9.1 Unless otherwise agreed, the goods or services shall be delivered free buyer's address, in other words in accordance with INCOTERMS 2010 DDP ('delivered duty paid'). Unless otherwise agreed, the risk for goods delivered shall pass only when the Contractor has delivered to the item at the agreed destination; the statutory provisions regarding default of acceptance remain unaffected.
- 9.2 The Contractor is obliged to correctly state the order number and the article number of the Client on all shipping documents and delivery notes; in case of failure to comply with this obligation, the Client shall not be responsible for any resulting delays in the handling of the delivery.
- 9.3 The Contractor must clearly mark hazardous substances and materials and include the required safety data sheets in the delivery.
- 9.4 Partial deliveries are permitted only if they have been expressly agreed in advance with the Client.
- 9.5 If the Contractor wishes to store items required for the performance with the Client, this is permitted only with the prior consent of the Client and only in the locations allocated by the Client to the Contractor for this purpose. The Contractor shall bear full responsibility and risk for these items until the performance in terms of the overall contract has been completed.

**10. Material and legal defects**

- 10.1 The Contractor is obliged to deliver the contractually agreed goods and services free of material and legal defects; they must be delivered in accordance with the state of the art, in compliance with the generally accepted standards of the industry and the contractually agreed or presumed use of the goods or services.
- 10.2 A Contractor, who is not merely a middleman, shall be strictly liable - irrespective of fault - for defects in the performance.
- 10.3 The Client shall inspect goods purchased from the Contractor within a reasonable period for any quality and quantity deviations and notify them, if appropriate. The notification shall be timely if received by the Contractor within a period of 5 working days - unless a longer period is appropriate in exceptional cases - calculated from the date of receipt of the goods or, in case of concealed defects, the date of discovery.
- 10.4 The Client shall be entitled without limitation to the statutory rights and claims for defects. The Client shall in any event be entitled to choose between a remedy of the defects and the production of a new product (new performance). If the performance is to be repaired, the repair shall be deemed to have failed after the first unsuccessful repair attempt.

The Client expressly reserves the right to claim for damages, in particular the right to demand damages in lieu of performance.

10.5 The Client is also entitled to remedy the defect itself at the expense of the Contractor if the Contractor is in default with the subsequent performance.

10.6 Even in case of minor deviations from the agreed quality or in case of a minor impairment of the usefulness of the performance, the Client shall be entitled to rescind the agreement and claim damages in lieu of the (entire) performance.

10.7 If a third party asserts claims against the Client for a violation of the rights of that third party committed by the contract-compliant use of the goods or services delivered by the Contractor, the Contractor shall indemnify the Client for those claims and reimburse all incurred costs upon first demand.

The Contractor's obligation to indemnify and remunerate the Client covers all necessary expenses incurred by the Client as a result of or in connection with the assertion of claims by the third party.

10.8 The prescription period for claims for defects shall be 36 months, calculated from the date of the transfer of risk. Any longer statutory prescription periods remain unaffected. The prescription period for repaired or newly supplied parts commences with regard to the corresponding defect upon repair/new delivery.

## **11. Liability, product liability and insurance cover**

11.1 The Contractor shall be liable exclusively in accordance with the relevant statutory provisions.

11.2 Insofar as the Contractor is responsible for product damage, the Contractor must indemnify the Client for any third-party claims upon first demand to the extent that the cause is within the scope of the Contractor's control and organization.

11.3 As part of the Contractor's liability for damages pursuant to para. 11.2, the Contractor is also obliged to reimburse any expenses pursuant to sections 683, 670 BGB or pursuant to sections 830, 840, 426 BGB of the Client, which result from or in connection with a legitimate recall operation conducted by the Client. The Client will notify - if possible and reasonable - the Contractor in time in advance about the content and scope of the recall operation action and give him the opportunity to submit commits.

The Contractor is obliged to maintain a third-party liability insurance for injury to persons, damage to property and pecuniary loss with the reasonable, industry-typical scope, as regards both the basis and extent of the liability. The Client must be provided with documentation of the insurance cover on request.

11.4 Further statutory claims of the Client remain reserved.

## **12. Retention of title, provision of parts**

- 12.1 The Client herewith rejects any form of extended or expanded retention of title of the Contractor and does not accept them.
- 12.2 If the Client provides parts for a delivery of goods or services on the part of the Contractor, the parts remain the property of the Client. Any processing or conversion by the Contractor shall be made on behalf of the Client. If the goods subject to retention of title are processed with other items not belonging to the Client, the Client acquires co-ownership in the new item created at the ratio of the value of the Client's goods (purchase price plus VAT) to the other processed items at the time of processing.

## **13. Compliance, minimum wage, data protection**

- 13.1 The Contractor undertakes to operate its business in accordance with the law.
- 13.2 The Contractor guarantees that its employees, any temporary employees, as well as the employees and temporary employees of a subcontractor employed by the Contractor regularly and timely receive a work remuneration at least at the rate of the statutory minimum wage. The Contractor herewith indemnifies the Client for all liability consequences that result if the aforementioned employees do not receive their statutory minimum wage.
- 13.3 Data protection-related requirements with regard to the performance of the Contractor shall be provided by the Contractor itself. If the use of the performance of the Contractor requires the satisfaction of specific data protection requirements on the part of the Client, the Contractor shall inform the Client accordingly.
- The Client processes the personal data of the employees of the Contractor to the extent that they become known to him as part of the Contract concerned and the processing is necessary to prepare or execute the Contracts. The Contractor is obliged to inform its employees accordingly.

## **14. References and advertising**

The Contractor may name the Client as a reference, or advertise in any other way using the business relation with the Client, only with the latter's express prior consent.

## **15. Transfer of contractual obligations**

The Contractor is not entitled to transfer contractual obligations in terms of a Contract awarded by the Client to third parties without the Client's express prior consent.

## **16. Export regulations**

The Contractor shall inform the Client without undue delay if the performance is subject to German or foreign export control regulations.

**17. Confidentiality and non-disclosure; data security**

- 17.1 The Contractor is obliged to treat all information obtained by it in terms of the business relations with the Client as confidential; the information may be used only to perform the Contract concerned. The Contractor is obliged to keep strictly confidential all contract-related illustrations, drawings, calculations and other records and information. They may be disclosed to third parties only with the express consent of the Client. The non-disclosure obligation remains in effect even after completion of the Contract concerned. However, the obligation expires if and to the extent that the production know-how contained in the illustrations, drawings, calculations and other records provided to the Contractor becomes generally known or was already demonstrably known to the Contractor prior to the communication of them by the Client.
- 17.2 If the Contractor receives information in electronic format, the latter shall be obliged to protect them against unauthorised access or loss in accordance with the state of the art.
- 17.3 The Contractor shall regularly create backup copies of the electronic data that are the subject of a Contract awarded by the Client in accordance with the progress of the contract works and shall store them professionally on an external memory.

**18. Place of performance and jurisdiction, applicable law**

- 18.1 The exclusive place of jurisdiction for all disputes arising from or in connection with Contracts of the Client shall be the latter's registered office. The Client is, however, entitled to also resort to the court that is geographically competent for the place of the Contractor's registered office (general place of jurisdiction of the Contractor).
- 18.2 Unless otherwise stipulated in the order, the Client's registered office shall be the place of performance.
- 18.3 Contracts awarded by the Client shall be governed exclusively by German law, subject to exclusion of the international law of sale, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

Last updated: 04/09/2018