

GENERAL CONDITIONS OF PURCHASE

SMS Elotherm GmbH

1. Order and Acceptance of Order

Orders and agreements shall only be binding when they are placed/concluded or confirmed by us in writing. The acceptance of orders shall be acknowledged to us in writing immediately after receipt thereof. The Contractor's terms and conditions contrary to or deviating from our conditions of purchase are not accepted by us unless these conditions had been recognized by us in writing in individual cases.

The execution of our order shall mean recognition of our conditions. If, in exceptional cases, prices have not been agreed previously, they shall be definitely quoted in the acknowledgement of order. Our right to opposition and cancellation shall remain reserved.

2. Prices

The agreed prices are firm and shall be understood free to location of use including packaging and freight costs plus turnover tax in the applicable percentage. If the agreed price is "ex works" or "ex store", we will bear only the most favorable freight cost. All costs which arise until delivery to the carrier including loading and excluding cartage shall be borne by the Contractor. The definition of pricing does not affect the agreement with regard to the place of fulfillment. We reserve the right to acknowledge increased or short deliveries.

3. Trade terms

For the interpretation of the trade terms, the INCOTERMS shall be applied in the version valid at the time of conclusion of the Contract.

4. Environmental and Accident Regulations

The Contractor shall be obliged to make any and all provisions required for the protection of the environment and against accidents as far as the subject of supply is concerned and to take any and all official and legal requirements into account. We shall be entitled to demand a certificate of the competent professional association stating that all accident prevention regulations have been met.

5. Subject of Supply

The subject of supply shall be appropriate for the purpose of use and conform to the latest state of the art. If standards are existing for the subject of supply and/or for any components thereof, these standards have to be observed in the following ranking order: SMS Elotherm GmbH works standards and manufacturing instructions, ISO, IEC, EN, DIN, VDE as well as technical instructions of other authorities, VBG accident prevention regulations, Law on technical working materials and consumer products (tool safety law and product safety law),

Security of machinery in accordance to DIN EN ISO 12100 and DIN EN ISO 13857.

If, in any individual cases, any deviations from a standard or from the ranking order stated are necessary, the Contractor shall invite our consent in writing. The warranty obligations of the Contractor will not be affected by our consent.

The fundamental safety and health requirements shall be met for the design and construction of machines as specified in the ruling EC-Directives and EC-Standards.

Any and all documentation, explanations, tests and identifications required according to these guidelines are likewise the subject of the supply extent.

6. Delivery Dates and Delay

Part-deliveries and/or deliveries effected prior to the agreed date are subject to our prior consent. Extra costs incurred through any advance shipment or part-delivery such as freight etc. shall be borne by the Contractor unless these deliveries have expressly been desired by us and we have expressly declared our readiness to take over such costs. If the Contractor realizes that he will not be able to meet a delivery date he shall be obliged to inform us without delay to permit other arrangements, if any, to be made thereafter.

The delivery dates agreed upon are binding.

If the Contractor fails to complete delivery within the Contract time we shall be entitled, after expiry of an extension of time granted, to demand, at our option, subsequent supply and damages due to delayed delivery or, instead of fulfillment, damages due to non-fulfillment and to withdraw from the Contract.

If the Contractor is responsible for the delay in the delivery time or the defective compliance he shall pay a penalty if this has been laid down in our order letter. Payment of a penalty does not release him from his obligation to fulfill the Contract or to compensate the damage still to occur.

7. Shipment

Unless agreed otherwise in individual contracts, the Contractor shall bear the wage and material costs incurred for loading and shipping documents as well as for standard packing as per the pricing stated under item 3. The weights of goods assessed by the railway authorities or on our own calibrated weigher shall be valid for the dispatch of goods. The specified weights shall be stated in the shipping notes for all consignments. In the case of delivery on call or in the case of interim storage upon our request, care shall be taken to ensure proper storage and adequate insurance.

Invoice, delivery note and dispatch note shall be submitted to us, duly made out.

The Contractor shall be liable for the consequences resulting from an incorrect bill-of-freight declaration. The dispatch note shall be submitted on dispatch of each individual consignment. If the shipping documents fail to show the respective place of designation, department, order number, reference note or note of issue, all costs thereby incurred shall be at the expense of the Contractor.

8. Guarantee

The Contractor accepts guaranty that all supplies/services conform to the latest state of the art, the relevant legal regulations and the rules and guidelines issued by authorities, professional associations and - as far as submitted - to the prescriptions in our drawings and specifications. If it is necessary in individual cases to deviate from these regulations, the Contractor shall first obtain our written consent. Such consent shall not have any effect on his obligation to subsequently fulfill his contractual obligations. The Contractor shall undertake to use environmentally beneficial products and processes for his supplies/services and also in the case of sub-supplies or additional services by third parties within the framework of the economical and technical possibilities. The Contractor shall be liable for the products supplied and the packing materials used to be compatible with the environment as well as for all consequential damages caused by the infringement of his legal obligations of disposal. The Contractor shall issue, upon our request, a certificate of procurement for the goods supplied.

If the subject of supply is defective/deficient, the Contractor undertakes to immediately eliminate this defect/ deficiency at his expense, including all incidental costs, at our option either by repair or replacement of the defective/deficient parts. In addition, we shall be entitled to any other remedies provided by law.

Should the Contractor fail to comply with his guarantee obligations within a reasonable period of time determined by us we shall be entitled to take the necessary measures at his expense and risk without prejudice to his guarantee obligations, or have them taken by third parties. In urgent cases and after agreement reached with the Contractor we shall have the right to do the mending ourselves or have it done by third parties. Minor deficiencies/defects can be eliminated by us without prior agreement in the interest of an undisturbed production, and the costs in this respect charged to the Contractor without thereby affecting his guarantee obligations. The same applies if exceptionally high damages have to be feared.

Unless stipulated otherwise in individual contracts, the obligation to subsequently perform our contractual obligations expires 24 months after acceptance by us of the subject supplied or after transfer thereof to a third party named by us in the place of receipt and/or use that we have described.

9. Protective Rights of Third Parties

The Contractor shall take the responsibility that the supply and use of the subject supplied do not infringe the protective rights of third parties, especially patents, registered patterns, patent and competition rights and shall release the purchaser from all justified claims raised by third parties.

10. Drawings, Construction Documents, Tools

Drawings and other documents, devices, models, tools and other auxiliary industrial tools and fixtures which are left with the Contractor remain our property. The ownership of tools and other fixtures paid for by us passes to us.

The aforementioned objects may not be scrapped or made available to third parties, e. g. for the purpose of manufacture without our written consent. They may not be used for other purposes - e. g. supply to third parties - than those stipulated in the Contract. The Contractor shall store them for us at his cost with due diligence during the execution of the Contract.

Care, maintenance and partial replacement are subject to the agreements made between us and the Contractor.

We reserve all rights of drawings or products made according to our data as well as of procedures developed by us.

11. Secrecy

All documents made available to the Contractor by us in connection with the order, regardless of the type and origin, must be kept strictly confidential by the Contractor. They may not be published, reproduced or made available to third parties without our written consent nor may they be used for another purpose than in connection with the order. Publication of excerpts is also prohibited. The Contractor is without limitation liable for damages caused to us owing to a violation of this obligation.

12. Force Majeure

Cases of force majeure are those circumstances which have occurred after the conclusion of the contract as a result of unpredictable events of an unusual nature beyond the contracting party's control, for example, natural catastrophes, war etc. The contracting party who was unable to fulfill the contractual obligations must upon occurrence and termination of the aforementioned circumstances inform the other party forthwith in writing thereof and submit proof of the fact that these circumstances considerably influenced the implementation of the delivery. The moment the impediment no longer applies, the effected party is obliged to inform the other party of its elimination and to continue with the contract implementation.

If the aforementioned circumstances, last more than three months, we are entitled, to cancel the purchase order. In this case the Contractor is obliged to reimburse the paid amount with a surcharge of 6% interest p.a.

13. Group Offset Clause

We shall have the right of offsetting for and against claims, even future ones, whether due or not due, which Siemag Weiss GmbH & Co. KG or a company in which said Company has direct or indirect participation of at least 50 % has asserted against the Contractor or which Contractor has asserted against one of these companies (Contractor shall upon request be given information at any time on the names of such companies).

14. Assignment, Offset and Right of Detention

Assignment of claims against us is not permissible unless we have given our written consent thereto previously. This shall also apply to equitable assignments.

The Contractor shall not be entitled to carry out offsets with maintained claims against our company without our prior consent unless the claim is indisputable or has been found legally valid.

Rights of detention of the Contractor are excluded unless they rest on the same contract relation.

15. Code of behavior

The Contractor is obliged to follow in each case the applicable laws. The Contractor will take part in particular neither actively nor passively, directly or indirectly in any form of corruption. If the Contractor offends against this obligation, we are entitled regardless of other claims to discontinue the contract or to withdraw from him.

16. Provision clause

Our fulfillment of contract is under the provision, that there are for the fulfillment of the contract no barriers because of national and/or international regulations of the foreign trade legislation as well as no embargos and/or other sanctions to be opposed.

17. Place of Fulfillment, Place of Jurisdiction, Applicable Law

The place of fulfillment for delivery is the place of receipt stated by us.

The place of fulfillment for payment is the ordering works stated in each case in the order letter.

The exclusive place of jurisdiction for deliveries and payments is Remscheid.

The law of the Federal Republic of Germany shall be applicable excluding the United Nations Convention on the International Sale of Goods (CISG).

18. Payment, Rendering of Accounts, Reservation/Retention of Title

Unless agreed otherwise in individual contracts, we shall be entitled to pay either two weeks after delivery and receipt of invoice, less two percent discount; or on the 25th of the month following delivery and receipt of invoice, without discount.

The Contractor is obliged to include a copy of the exemption certificate with every invoice covering construction work. If no exemption certificate is included, we will deduct a tax amount of 15 % from the respective gross invoice amount.

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We refute all kinds of reservation and/or retention of title, such as but not limited to elongated or extended reservations and/or retentions of title. Any such rights require our express prior written consent under reference to these General Conditions of Purchase for each individual case in our order. Should you nevertheless assert ownership rights, shared ownership rights or liens or cause enforcement proceedings to be taken, you shall be liable for any resulting damages and/or losses and reimburse us for any costs.

19. Time Limitation

Claims against us by virtue of or in conjunction with the order become barred after expiry of two years after the date of receipt of the supply and the invoice.

20. Export Control and Customs Regulations

The Contractor shall be obliged to inform us actively about any applicable (re-) export licence requirements for the products under German, European or US export control law and customs regulations as well as the export control law and customs regulations of the country of origin of the products.

For goods subject to export authorisation, the Contractor shall furnish within 10 working days after placing of order a written declaration of the items/goods stating the following information:

- Order number, order position and project number;
- Export list number (Ausfuhrlistennummer) according to Annex AL to the German Foreign Trade and Payments Regulation (Außenwirtschaftsverordnung) or the currently valid Appendix I of the EG-VO 428/2009 (dual use regulation);
- For US goods or goods with US components (including technology and software) the ECCN (Export Control Classification Number) of the CCL (Commerce Control List) or EAR 99 (subject to the EAR) according to the US Export Administration Regulations (EAR);
- The harmonized tariff system number (HS code).

Upon our request, the Contractor shall be furthermore obliged to furnish the following information:

- Information on whether the good was transported through the USA, was produced or stored in the USA, or was made with the help of US-American technology,
- The trade origin of the good and the components of the good, including technology and software.

The Contractor shall be obliged to inform us about all changes in writing. All aforementioned information shall be directed to the person stated in the header of the purchase order.