

## General Terms and Conditions of Purchase of SMS group GmbH

### 1. Scope and Conclusion of Contract

1.1 These terms and conditions shall apply to any supplies/services by the contractor ("**Supplies**") to the SMS group GmbH as purchaser.

1.2 Any other terms and conditions, regardless of whether contradicting or supplementary, do not become part of the contract even if the purchaser does not expressly contradict them. The execution of the purchaser's order shall be deemed acknowledgement of these General Terms and Conditions of Purchase.

1.3 Any orders and agreements shall only be binding if they have been placed or confirmed by purchaser in writing. The acceptance of orders shall be confirmed to the purchaser in writing immediately upon receipt thereof.

1.4 Any amendments to these terms and conditions shall be made in writing. This shall also apply to a modification or elimination of this written form requirement.

1.5 The contractor shall only be entitled to subcontract its Supplies upon the purchaser's prior written approval.

### 2. Prices and Terms of Payment

2.1 The agreed prices shall be deemed to be fixed prices and shall apply free to the place of use including packaging and freight costs - plus the applicable value added tax. If the agreed price is "EXW" or "FCA", the purchaser will bear only the most favorable freight costs. All costs arising up to the delivery to the freight forwarder including loading but excluding cartage shall be borne by the contractor. The definition of pricing shall not affect the agreement on the place of fulfillment.

2.2 If in exceptional cases prices have not been agreed upon, they shall be specified bindingly in the order confirmation. The purchaser shall be entitled to reject the price and/or rescind the contract without any further rights and claims between the parties.

2.3 Unless agreed otherwise, the purchaser shall be entitled to a two percent discount if the payment will be effected within two (2) weeks after delivery and receipt of invoice. Otherwise the payment will be due on the 25<sup>th</sup> (twenty-fifth) of the month following delivery and receipt of invoice, without any discount. If the contractor has rendered construction works and has not submitted an exemption certificate, the purchaser will deduct a tax amount of fifteen percent (15 %) from the respective gross invoice amount.

2.4 Any assignment of claims against the purchaser requires the purchaser's prior written consent.

2.5 The contractor shall only be entitled to withhold payments and/or set off any claims against the purchaser if and to the extent such claims are uncontested or have been finally and non-appealably established.

2.6 The purchaser shall be entitled to set off with and against claims, whether due or not, including those arising in future, to which SMS GmbH or a company in which SMS GmbH holds a direct or indirect share of at least fifty percent (50 %) is entitled against the contractor or the contractor has asserted against one of these companies. Upon request, the contractor will be provided with information at any time on the names of these companies.

2.7 Each kind of retention of title, such as but not limited to an extended or expanded one, shall be excluded unless purchaser has expressly confirmed acceptance in the purchase order with reference to these General Terms and Conditions of Purchase.

### 3. Legal Relationship, Trade Terms

3.1 To the extent these General Terms and Conditions of Purchase do not stipulate the legal relationship between the parties extensively, the applicable law shall apply.

3.2 The ICC INCOTERMS shall be interpreted on the basis of the latest version valid at the time of conclusion of the contract.

### 4. Delivery and Delivery Time

4.1 Place of fulfillment for delivery is the place of receipt stated by the purchaser.

4.2 Partial delivery and/or deliveries before the agreed date require the purchaser's prior written consent. Extra costs incurred through any partial delivery or advanced delivery, such as freight, etc. shall be borne by the contractor unless purchaser has expressly requested such deliveries and has expressly agreed to assume such costs.

4.3 The agreed delivery dates are binding. If the contractor realizes that he will not be able to meet a delivery date, he shall inform the purchaser without delay in order to enable the purchaser to make alternative arrangements, if any.

4.4 If the contractor is in delay the purchaser shall after expiry of a reasonable grace period be entitled to demand, at its option, fulfillment and damage compensation due to delayed delivery or, instead of fulfillment damage compensation due to non-fulfillment and rescind the contract. If the delay in delivery or the faulty fulfillment is due to reasons attributable to the contractor, he shall pay a penalty if and to the extent this has been stipulated in the purchaser's order letter.

4.5 The Payment of any penalty does not release the contractor from its obligation to fulfill the contract. The purchaser reserves the right to claim any further damage compensation.

### 5. Shipment

5.1 In case of delivery on call or in case of interim storage upon the purchaser's request, proper storage shall be ensured. Invoice, delivery note and dispatch note shall be submitted to purchaser in due form.

5.2 The contractor shall be liable for the consequences resulting from any incorrect bill-of-freight declaration. The dispatch note shall be submitted immediately upon dispatch of each individual consignment. If the shipping documents fail to show the respective place of destination, department, order number, reference note or note of issue, all costs thereby incurred shall be borne by the contractor.

5.3 The contractor shall take out a transport insurance to cover its interests.

### 6. Drawings, Construction Documents, Tools

6.1 Drawings and other documents, devices, models, tools and other means of production provided to the contractor remain the property of the purchaser. The title to tools and other fixtures paid by the purchaser shall be assigned to him. The aforementioned objects may without the purchaser's prior written consent neither be scrapped nor made available to third parties, e. g. for the purpose of manufacture. They may not be used for other purposes, e. g. supply to third parties, than those stipulated in the contract.

6.2 The aforementioned objects shall be stored by and on the expense of the contractor with due care during the contract execution. Care, maintenance and partial replacement shall be subject to the agreements between the contractor and the purchaser. The purchaser reserves all rights to drawings, or products made according to the purchaser's data as well as to procedures developed by the purchaser.

### 7. Requirements concerning the Supplies

The purchaser's manufacturing instruction SN 200 contains mandatory minimum requirements for the contractor. Unless agreed otherwise, the requirements set forth therein shall be met. Furthermore, any applicable norms and standards, such as but not limited to DIN, EN, and ISO shall be complied with. If, in individual cases, deviations from the manufacturing instruction and/or the applicable norms and standards are necessary, the contractor shall obtain the purchaser's prior written consent. However, such consent does not release the contractor from any of its contractual or legal obligations.

### 8. Warranty

#### 8.1 Defects in material

8.1.1 The contractor guarantees that any Supplies conform to the state of the art, the applicable legal regulations and rules and directives of authorities, professional associations and – as far as submitted – to the prescriptions in the purchaser's drawings and specification. If, in individual cases, any deviations are necessary, the contractor shall obtain the purchaser's prior written consent. However, such consent does not release the contractor from any of its contractual and/or legal obligations.

8.1.2 The contractor shall be obliged to use environmentally friendly products and processes for its Supplies, also in case of sub supplies or additional services by third parties, within the framework of the economic and technical possibilities. The contractor shall be liable for the environmental compatibility of the Supplies and packing materials and any consequential damages resulting from the infringement of its legal obligations of disposal. Upon request of the purchaser, the contractor shall issue a certificate of quality for the goods supplied.

8.1.3 Upon receipt, the purchaser shall examine the Supplies regarding identity, completeness and visible outer damages, in particular transportation damages, and notify the contractor in case of any failure. The purchaser shall not be obliged to any further examination and notification.

8.1.4 If the Supplies are defective, the contractor shall remedy the defect without delay at its expense, including any incidental costs – also covering reassembling and assembling costs – at the purchaser's option by either repair or replacement of the defective parts. In addition, the purchaser shall be entitled to any other remedies provided by law.

8.1.5 If the contractor fails to remedy a defect within a reasonable grace period set by the purchaser, the purchaser shall be entitled to remedy the defect itself or have it remedied by a third party at the risk and expense of the contractor without prejudice to the contractor's ongoing warranty obligations.

8.1.6 In urgent cases, after consultation with the contractor, the purchaser shall be entitled to remedy the defect itself or have it remedied by third parties. On the interest of an undisturbed production the purchaser shall be entitled to remedy minor defects without prior consultation with the contractor, and the costs shall be charged to the contractor without prejudice to the contractor's warranty obligations. The same shall apply if threats of exorbitantly high damages arise.

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### 8.2 Defects in title

The contractor guarantees that its Supplies and the use of its Supplies do not infringe intellectual property rights of third parties, such as patents, utility models, trademarks, copyrights, know-how and trade secrets. If the use of the Supplies results in an infringement of intellectual property rights of third parties, the contractor shall at the discretion of the purchaser procure a respective license for the purchaser's benefit or modify the Supplies in a reasonable way for the purchaser so as to avoid the infringement. In addition, the contractor shall release and hold harmless the purchaser and the purchaser's customers from all justified claims raised by third parties to the extent permissible.

**8.3** Unless agreed otherwise, the warranty period shall end twenty-four (24) months after acceptance of the Supplies by the purchaser or after delivery by the contractor to a third party named by the purchaser at the place of receipt/use prescribed by the purchaser.

### 9. Export Control

The contractor shall be obliged to actively inform the purchaser with order confirmation on any applicable goods-related authorization requirements for its Supplies according to German, European and US-American export regulations.

### 10. Confidentiality and Intellectual Property Rights

**10.1** Any and all drawings, documentation and/or other information, exchanged between the parties, whether directly or indirectly, whether verbally or written, in connection with the contract or the contract initiation, shall be solely used for the purpose of operation, repair and/or maintenance of the Supplies, shall be kept in strict confidence and shall be disclosed to third parties only upon the other party's prior written consent. This obligation shall remain valid for a period of ten (10) years after contract initiation.

**10.2** Both, the contractor and the purchaser, shall be obliged to impose on all employees having access to such confidential information the obligation to keep such information confidential and to neither use nor disclose it to third parties. This obligation shall be imposed on the employees not only for the period of their employment but also for the time after their separation from the respective company.

**10.3** Any intellectual property rights relating to the purchaser's quotations, drawings and any other documents shall remain vested in the purchaser and shall not be exploited or made available to third parties without the purchaser's prior written consent. The same applies to any other technical details which result from the order or have been disclosed in other correspondence or negotiations. Nothing contained in these Terms and Conditions of purchase shall be construed as granting any right under the purchaser's intellectual property rights.

**10.4** The parties accept these obligations by starting into negotiations, irrespective of whether a contract will be concluded.

### 11. Compliance

The contractor shall be obliged to comply with the laws of any applicable jurisdiction. In particular, the contractor shall conform to the anti-bribery rules and regulations applicable to the parties. If the contractor violates this obligation, the purchaser shall be entitled to terminate or rescind the contract without prejudice to any further claims.

### 12. Limitation Period

Claims against the purchaser by virtue or in conjunction with its orders shall become time barred after expiry of two (2) years from the date of receipt of the Supplies and the invoice. If the date of receipt of the Supplies and the date of receipt of the invoice differ from each other, the earlier date shall be relevant.

### 13. Jurisdiction and Applicable Law

**13.1** The contractor irrevocably submits to the jurisdiction of the courts of Düsseldorf. However, the purchaser shall also be entitled to initiate proceedings in the court where the contractor has its place of business.

**13.2** The law of the Federal Republic of Germany shall apply under exclusion of the United Nations Convention on the International Sale of Goods (CISG).