

# General Conditions of Purchase of Hoesch Schwerter Profile GmbH (Version September 2015)

## I. Application

1. These Purchase Conditions (Conditions) shall apply to all our present and future orders for goods and services and to the performance of such orders with commercial buyers, with public legal entities as well as public trusts. Contractor's conditions diverging from these Conditions will not be acknowledged unless otherwise stipulated within these Conditions or otherwise agreed in the contract with the Contractor. Should we accept the goods not expressly objecting to these Conditions, the Contractor may in no case assume our consent with his conditions.
2. Any documents used by the Contractor in business dealings with us shall state the following references: Order No., commission No., mill, receiving centre, ID number, complete article text / description of goods, quantities and unit of quantity as well as turnover tax identification number (for imports from the EU).
2. Oral agreements, promises, assurances and guaranties made or given by our sales staff shall not be binding unless confirmed by us in writing, by telefax or by e-mail.
3. Any offer made by us will be free of charge and not binding to us.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time

## II. Prices

1. The contract price shall be regarded as a fixed price and include everything to be effected by the Contractor for the purpose of discharging his obligation to perform.
2. In case of "free house" deliveries, deliveries "free place of destination" and other "free"-deliveries, the price shall include the costs for freight, packaging and customs/duties. In case of "unfree" delivery, we shall bear the lowest possible freight rates only, unless we have requested a special kind of delivery.

## III. Scope of Supply

1. The scope of supply includes, i.a.,
  - the transfer by the Contractor to us of ownership to all and any technical documentation (including that involving subcontractors) and to other documents required for the manufacture of new articles, for maintenance and operations. These technical documents must be in German and drawn up in compliance with the SI international standards system;
  - the transfer by the Contractor of all rights and privileges necessary to enable us or a third party to utilise the supplies and services, taking into account any possible patents, supplemental protective certificates, trade marks, registered patterns;
  - us having the unrestricted right to conduct repairs to the taken-in work and to make modifications to the same itself or to have the same done by others; furthermore to make replacement parts itself or to have them made by others.
2. In the event of any deviation from the agreed scope of performance, the Contractor is only entitled to extra payment or changes in the schedule if an appropriate supplementary agreement has been entered into in writing prior to undertaking the same.
3. The ordered quantities are binding. In the event of over-deliveries, we are entitled to reject the same at the expense of the Contractor.

## IV. Quality

1. The Contractor shall establish and maintain a documented quality assurance system of a suitable type and scope and in compliance with state-of-the-art technology. The Contractor shall draw up records, in particular in respect of its quality inspections, and shall provide us with the same on request.
2. The Contractor herewith consents to quality audits being conducted by us or by a person appointed by us for the purpose of assessing the effectiveness of its quality assurance system.

## V. Delivery Times / Late Delivery

1. All contractual terms and dates of delivery shall be binding to the Contractor. The Contractor shall immediately inform us in case of imminent delays and submit to us adequate proposals to remedy the consequences of such delays.
2. Unless otherwise agreed in writing, any contractual terms and dates of delivery shall be considered to be met only if and in so far as the goods have been handed over to us at such dates.
3. If and in so far as the Contractor defaults in delivery, we shall be entitled to our statutory rights. In particular, we shall have the right to claim damages for non-performance if and in so far as the Contractor fails to effect delivery after a reasonable grace period set to him has elapsed. Our right to request delivery of the goods shall expire only after the Contractor has compensated us for our damages.
4. The Contractor may excuse his default by claiming the lack of any documents to be submitted by us only in such cases where we have, upon the Contractor's reminder, failed to procure such documents.
5. The Delivery Specifications (see regulation VXIII) must be observed by the Contractor.

## VI. Payment

1. Unless otherwise agreed or unless the Contractor's conditions provide for more favourable terms, payment shall be made either within 14 days with 3 p.c. discount or within 30 days without discount.
2. Payment and discount periods shall begin with the receipt of the invoice but not before the receipt of the goods resp. the approval of services and where the contract includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of such documents as agreed in the contract.
3. Payment shall be made by cheque or by bank remittance. Payment is considered to have been made in time if the cheque has been mailed on the due date or the bank has been charged with the remittance on the due date.
4. We will not be liable for maturity interest. The interest rate for default will be 5pct-points above the Basic Interest Rate. In any case, we may claim and prove a lower default damage than claimed by the Contractor.
5. We shall be entitled to all our statutory rights as to the set-off and retention of our claims. We are in particular entitled to refuse payment if and as long any inspection documents acc. to EN 10204 have not been supplied.

## VII. Retention of Title of the Contractor

1. The Contractor's terms covering his retention of title shall be valid subject to the condition that title in the goods shall pass to us on the date of payment for such goods. Hence, the forms of the

expanded and prolonged retention of title (erweiterten und verlängerten Eigentumsvorbehalt) shall not apply.

2. The Contractor may claim return of the goods on the basis of the retention clause only if he has previously withdrawn from the contract.

## VIII. Our Retention of Title

1. We shall retain the title to all parts provided to the Contractor. Any processing or transformation shall be performed by the Contractor for us. If goods subject to retention of title are processed together with other goods not owned by us, the latter shall acquire joint ownership of the new products relative to the proportionate value of the goods subject to retention of title into the value (purchase price plus VAT) of the remaining processed goods at the time of processing.
2. If goods provided by us are inseparably mixed with other goods not owned by us, the latter shall acquire joint ownership of the new products relative to the proportionate value of the goods subject to retention of title into the value (purchase price plus VAT) of the remaining mixed goods at the time of mixing. If products are mixed in such a manner that the Contractor's good would be deemed the principal thing, it shall be considered agreed that the Contractor will confer proportionate joint ownership to us; the Contractor shall safeguard sole ownership or joint ownership for us.
3. We shall retain the title to all tools, fixtures and other objects ("tools") provided to the Contractor for production; the Contractor is obliged to use these tools exclusively for manufacturing the goods ordered by us. The supplier shall be obliged to insure all tools owned by us against damage resulting from fire, water and theft at his own expense. The supplier shall also assign all rights to compensation from his insurance to SMP at the point of conclusion of the contract; the latter herewith accepts such assignment. The supplier shall be obliged to carry any maintenance and inspection works of the tools owned by SMP that may be required, as well as all servicing and repair work in due time at his own expense. He must inform us immediately of any potential malfunctions; rights to compensation shall remain unaffected by any culpable failure to notify.
4. Insofar as the security interests that we are entitled to pursuant to clause 1 and/or clause 2 exceed the purchase price of the goods not yet paid for by more than 10%, we shall be obliged, upon request by the Contractor, to release security interests at our discretion.

## IX. Performance of Deliveries / Passing of Risks / Storage

1. The Contractor shall bear the risks of accidental loss and accidental deterioration of the goods until it has been handed over to us at its place of delivery. This provision shall also apply in cases of "free delivery".
2. We will not accept partial deliveries unless we have given our prior express consent to them. If we have given our consent, partial shipments are to be identified as such, delivery notes are to be submitted as a single copy.
3. Unless otherwise agreed in writing, the Contractor shall bear the costs of packing. Should we, in a given case, agree to bear such costs, the Contractor may charge the lowest possible rates only. Any obligations to take back packing material shall be governed by the Packaging Decree (Verpackungsverordnung) as amended from time to time.
4. The specified delivery addresses must be complied with. Delivery to any other receiving centre than that named by us shall not constitute any transfer of risk on behalf of the Contractor, even if this function accepts delivery. The Contractor shall bear the additional costs incurred by us arising from the delivery to a different receiving centre than that agreed upon.
5. Should any weighing be required, the weight determined on our calibrated weighing machine shall be decisive.
6. The storage of articles required for the purpose of effecting performance on our premises shall only take place at designated storage depots. The Contractor shall assume full responsibility and risk for these articles until transfer of risk.
7. The supplier shall have the receipt of shipments acknowledged in writing by the specified receiving centre.

## X. Assignment

The Contractor is not entitled to assign the discharge of the contract or any of its contractual claims either partly or in full to any other person without our previous written consent.

Any subcontractors of the Contractor are to be specified to us by name on request.

## XI. Termination

1. We are entitled to terminate the contract partly or in full without specifying any grounds. In such case Art. 649, P. 2 BGB (German Civil Code) shall be applicable.
2. We are entitled to give notice if, insolvency proceedings are filed against the property of the Contractor, unless there are contracts for the continuous supply of goods / energy, or in case of the occurrence of a significant deterioration in the financial situation of the Contractor. We are entitled to accept materials and/or semi-finished goods, including any special equipment, on reasonable terms and conditions.

## XII. Invoicing, Payment, Setoff

1. The Contractor may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship or are undisputed or have become legally binding.
2. We are entitled to setoff the debts payable to the Contractor by the Purchaser with all its claims.
3. The invoice is to be sent as a single copy to our purchasing accounts department.

## XIII. Declarations of Origin

1. The Contractor will, upon our demand, provide us with a supplier's declaration regarding the preferential origin of the goods.

2. Where the Contractor makes a declaration in regard to the preferential or non-preferential origin of the sold goods, the following terms shall apply:

- a) The Contractor will allow verification through customs authorities and submit all necessary information as well as any required certification.
- b) The Contractor shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences.

**XIV. Warranty Provisions and Statute of Limitations**

1. The Contractor shall deliver the goods free of any material and legal defects. He will warrant in particular that his deliveries and his services comply with the state of the art and with any contractual requirements and standards.
2. We will examine the quality and quantity of the goods upon their receipt to the extent both reasonable and technically feasible for us. Any notice of a defect will be deemed to be in time if it reaches the Contractor within eight working days by letter, telefax, e-mail or by telephone. Periods for such notices shall not start before we – or in case of ex-works sales (Streckengeschäfte) our buyers – have detected or should have detected the defect.
3. In the event that the goods show a defect, we may exercise our statutory rights. If the Contractor tries to repair the goods, such remedy is considered to have failed after the first unsuccessful attempt. We shall have the right to withdraw from the contract also in such cases where a breach of contract is not considered to be material.
4. Where the goods have already been defective at the time the risk has passed to us, we may claim from the Contractor also those expenditures in connection with such defect which we are liable to pay to our customer.
5. Any claims arising from defects of the goods will be governed by the statutory limitation periods. Such periods will begin with the timely notification of the defect in accordance with the provisions of No. 2 of this clause. The Contractor’s warranty for the goods will elapse at the latest ten years after its delivery. Such limitation will not

apply in those cases where our claims rely on facts which the Contractor knew or should have known and which he did not reveal to us.

6. The Contractor hereby assigns to us - on account of performance – the benefit of any claims against his supplier arising from the delivery of deficient goods or of such goods not conforming with the guaranteed characteristics. He will supply us with any documents necessary to enforce such claims.

**XV. Place of Performance, Jurisdiction, Applicable Law**

1. Unless otherwise agreed to, our warehouse shall be the place of performance for the delivery.
2. Our principal office shall be the place of jurisdiction. We may, however, sue the Contractor at his place of jurisdiction or at the court which is competent for our branch office with which the contract in question has been concluded.
3. All legal relationships between us and the Contractor shall be governed by the laws of the Federal Republic of Germany supplementing these Purchase Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

**XVI. Prohibition of Advertising / Confidentiality**

1. The use of inquiries, orders and correspondence associated with the same from us for advertising purposes is subject to our express written consent.
2. The Contractor shall not disclose to any third parties and shall keep secret all and any information regarding business transactions, facilities, plant and machinery, documents, etc. at the premises of us and our customers that may come to its knowledge in conjunction with its work for us, even after submission of individual quotations or discharge of the contract. The Contractor shall impose the same obligations upon his vicarious agents and representatives.

**XVII. Data Protection**

We herewith point out, in compliance with Art. 33 of the German Federal Data Protection Act (BDSG), that it intends to store data relating to the Contractor on the basis of the German Federal Data Protection Act.

**XVIII. Delivery Specifications**

The goods are to be packed separately for the individual receiving departments and shipped to the goods receiving centres specified by us. The loading of goods for different departments in one consignment is only permissible in agreement with us. If shipment is to be effected by road, delivery must take place at the following times:

- Monday to Thursday: from 6.00 a.m. – 1.30 p.m.
  - Friday: from 6.00 a.m. – 10.30 a.m.
- and outside these times only by prior arrangement.

In no event will freight costs be paid cash to the deliverer. The receiving department, the order number and the date of order must be stated in all bills of lading and other papers accompanying the consignment, as well as in delivery notes and invoices. Delivery notes must also be issued by sub-contractors in each case, and must be dispatched to us on the date the goods are sent off. In the case of wagon loads, adhesive labels must be attached to the freight cars from which, among other things, the receiving business division is also evident. All special charges for shunting fees, truckage, etc., incurred as a result of non-observance of our specifications shall be borne by the Contractor. These expenses shall be deducted from the invoice.

All freight charges for works trucks and other lorries are to be charged to us together with the invoice for the goods. Freight costs charged by forwarding agents are unacceptable.

Shipment to:	Receiving station for truck shipment		Railway station for wagon loads		Postal packages	Individually packaged goods and express goods Postal address
	Community	Rate	Station No.:	Station at destination		
	Rate category	No.				<b>1. Indiv. packaged goods</b>
4. Hoesch Schwerter Profile GmbH	Schwerte (Ruhr)	26308 Eisenindustriestr.	*080168	Schwerte (Ruhr) Siding	Eisenindustriestr. 58239 Schwerte (Ruhr)	Destination Post code 58089 Hagen main station