

**SFI GmbH**  
**PURCHASE TERMS AND CONDITIONS 10/2019**

**1. General - Scope of application**

- 1.1. The following purchase terms and conditions apply exclusively for orders placed by us and for any and all deliveries, services and quotes of our suppliers. We do not accept any conflicting or deviating purchase terms and conditions of the supplier, unless we expressly agree to the application of such terms and conditions in writing. Our purchase terms and conditions apply even if we accept the delivery of a supplier without reservation while being aware of conflicting or deviating terms and conditions of such supplier, or if our terms and conditions are excluded by the supplier's terms of delivery. The execution of our order by the supplier is deemed to constitute an unconditional acceptance of our purchase terms and conditions.
- 1.2. All correspondence shall be addressed to the purchasing department placing the order. Any agreement with other departments shall be expressly and formally confirmed by the purchasing department placing the order to be effective.
- 1.3. Any and all agreements concluded between us and the supplier for the purpose of executing the contract shall be documented in writing.
- 1.4. Our purchase terms and conditions apply only vis-à-vis entrepreneurs pursuant to § 310 para. 1 *BGB* [German Civil Code].

**2. Orders, order confirmations and quotes**

- 2.1. Our orders shall be placed in writing. Oral agreements and agreements concluded by telephone shall be confirmed by us in writing. The same applies for subsequent amendments.
- 2.2. Unless a different binding period is expressly stated in our orders, we are bound by such orders for a period of one week as of the date of the order. An order is deemed accepted in time if we receive the acceptance in time.
- 2.3. We are entitled to terminate the contract in writing at any time, stating the reason for such termination, if we can no longer use the ordered products for our business activities for reasons arising after the conclusion of the contract. In this case, we will compensate the supplier for any partial service already provided.
- 2.4. We reserve all property and copyrights in images, drawings, calculations, models and other documents, and such documents may not be disclosed to third parties without our express written consent. Such documents may only be used for production in accordance with our order and shall be returned to us without prompting upon completion of the order. Worn models shall be reported to us for repair without prompting. They shall be kept confidential vis-à-vis third parties; in this respect, the provisions of clause 14.5. apply.

**3. Prices and payment terms**

- 3.1. The prices indicated in our order and confirmed by the supplier are binding. We do not pay any consideration for the preparation of quotes, cost estimates, planning and similar services.
- 3.2. The statutory VAT is included in the price.
- 3.3. Unless otherwise specified in the order, delivery shall be effected carriage and packaging paid by the supplier. The costs of appropriate shipment and proper and customary packaging as well as the costs of transport insurance shall be borne by the supplier and are included in the fixed price. Packaging costs are compensated separately only based on a corresponding written agreement.
- 3.4. The cost of disposal of the packaging shall be borne by the supplier. If the return of the packaging material used for the shipment is agreed, we will return such material to the delivery company at their risk and expense. For any deliveries that we receive by way of a freight forwarder, our determination of the quantity, weight and properties is exclusively decisive.
- 3.5. The supplier shall pay any customs duties, taxes, duties and import costs incurred in connection with an order.
- 3.6. Any and all payments are made subject to our rights arising from possible defects. Payments do not constitute an acknowledgement of the performance or a waiver of warranty claims or claims for damages, if any.

**4. Invoices**

- 4.1. Invoices can only be processed if they indicate the order number as specified in our respective order and are sent to us in duplicate. The supplier shall be liable for any consequences resulting from non-compliance with this obligation, unless they can prove that such non-compliance is not imputable to the supplier.
- 4.2. We only accept invoices with the sales tax listed as a separate item.
- 4.3. Unless otherwise agreed in writing, all payments shall be made by means of payment of our choice within 14 days after receipt of the delivery and a proper and verifiable invoice with 3% cash discount, within 30 days after receipt of the delivery and a proper and verifiable invoice with 2% cash discount, or net within 90 days after receipt of the delivery and a proper and verifiable invoice. Payments due are deemed to be made in time if our bank receives the transfer order in time.
- 4.4. In case of default, we shall be liable to pay default interest in an amount equal to the base interest rate plus 5 percent pursuant to § 247 *BGB*.

**5. Retention of title of the supplier**

The supplier's right of retention of title applies only to the extent that it refers to our payment obligation regarding those products with respect to which the supplier retains the title. Any expanded or extended retention of title in particular is inadmissible.

**6. Assignment, offsetting and right of retention**

- 6.1. An assignment of claims against us to third parties without our express consent is excluded. The supplier may offset claims only against undisputed or legally established claims.
- 6.2. We reserve the right to assign our claims arising from the existing legal relationships to third parties at any time and to offset any claims due to us against counter-claims of the supplier, if any.
- 6.3. We are entitled to the rights of retention and plea of non-performance of the contract to the statutory extent.

## **7. Period of delivery and delivery**

- 7.1. The periods of delivery agreed and indicated in the order are binding. Packing slips and shipping documents shall be enclosed with every delivery. The shipping documents shall indicate the order and commission numbers as well as drawing and position numbers, if any. Deliveries with insufficient accompanying documents will be deferred with respect to processing and payment.
- 7.2. Notwithstanding our rights arising from any delay in delivery, the supplier shall notify us in writing without undue delay of any circumstances arising or becoming apparent after the order confirmation due to which the agreed period of delivery cannot be complied with. The supplier undertakes to take all necessary measures to prevent a delay and to avoid any consequences of such delay at the supplier's expense. Additional costs incurred due to a delay in delivery, in particular due to express deliveries, shall be borne by the supplier.
- 7.3. In the case of a delay in delivery, we are entitled to the statutory claims. We are in particular entitled to raise a claim for damages instead of performance and rescission after unsuccessful expiry of an appropriate grace period. If we raise a claim for damages, the supplier has the right to prove that they are not responsible for the breach.
- 7.4. In the case of a delay in delivery, we are entitled, after prior written notice to the supplier, to claim a contractual penalty in an amount equal to 0.5% of the respective order value for each commenced week, but no more than 5% of the order value in total. The contractual penalty shall be deducted from the damage caused by delay to be compensated by the supplier.
- 7.5. Deliveries or partial deliveries ahead of schedule may only be effected with our written consent.
- 7.6. In case of force majeure, labour disputes, non-culpable works disputes, and other inevitable events of considerable duration, we are entitled, notwithstanding our other rights, to fully or partially rescind the contract. Any and all rights arising from a delay in delivery according to clauses 7.2 to 7.4 above remain unaffected thereby.

## **8. Transfer of risk, documents**

- 8.1. Unless otherwise agreed in writing, delivery shall be effected carriage paid.
- 8.2. Even if shipping has been agreed, the risk is transferred to us only upon handover of the goods to us at the agreed destination.
- 8.3. The supplier shall indicate our order number on all shipping documents and packing slips; otherwise, any delays in processing caused by the omission are not imputable to us.

## **9. Specifications**

If we provide drawings, samples or other specifications, such specifications are exclusively authoritative with respect to the nature, properties and design of the goods to be delivered.

## **10. Investigation of defects and claims for defects**

- 10.1. We shall check the goods for deviations in quality and quantity within an appropriate period of time; a complaint on our part is deemed to be made in time and without undue delay pursuant to § 377 HGB [German Commercial Code] if the supplier receives it within ten working days as of receipt of the goods or, in the case of hidden defects, as of their discovery.
- 10.2. We are entitled to the statutory claims for defects without restriction; in any case, we are entitled to demand either the repair of the defect or the delivery of a replacement from the supplier at our own discretion. Our right to claim damages, in particular the right to claim damages instead of performance, is expressly reserved.
- 10.3. We are entitled to cure the defect ourselves at the expense of the supplier if the supplier is in default regarding such cure. We are furthermore entitled to cure the defect ourselves at the expense of the supplier in case of imminent danger or particular urgency.
- 10.4. The supplier shall reimburse us for any costs incurred for the inspection, sorting, disassembly, etc. of the defective goods. If such defects are discovered only upon treatment, processing or usage of the goods, we are entitled to claim reimbursement of any futile costs incurred by us up to that time.
- 10.5. The limitation period for defects is 36 months from the moment of the transfer of risks, unless longer warranty periods are prescribed by law or a longer warranty period has been agreed.
- 10.6. Our approval of technical documents and/or calculations of the supplier does not affect the supplier's liability for defects.
- 10.7. Upon receipt of our written notice of defects by the supplier, the limitation period for warranty claims is suspended. In the case of a replacement delivery and repair of defects, the warranty period for replaced and repaired parts starts again, unless the supplier's behaviour leads us to assume that the supplier did not consider themselves obliged to take the respective measure, but provided the replacement or repair of the defect only as a gesture of goodwill or for similar reasons.

## **11. Product liability, indemnity and liability insurance cover**

- 11.1. If the supplier is responsible for product damage, they shall indemnify and hold us harmless from and against third-party claims for damages upon first request to the extent that the cause lies within the supplier's sphere of control and responsibility and the supplier is liable in the external relationship.
- 11.2. Within the framework of their liability for damage in the sense of clause 12.1. above, the supplier shall also reimburse any expenses pursuant to §§ 670, 683 BGB or §§ 426, 830, 840 BGB incurred due to or in connection with a product recall by us. We will notify the supplier - as far as possible and reasonable - of the subject-matter and scope of the recall to be carried out, and give the supplier the opportunity to issue a statement. Other statutory claims remain unaffected.
- 11.3. The supplier undertakes to take out public and product liability insurance with a lump-sum coverage of € 10 million per case of personal injury/property damage minimum for the term of the present contract, and to maintain such insurance until the expiry of the respective limitation period for defects. The supplier shall prove the existence of such insurance upon request at any time by producing appropriate documents.

## 12. Property rights

- 12.1. The supplier represents and warrants that their delivery does not violate any third-party property rights in the member states of the European Union, or in other countries to which we supply the products in a manner that is apparent for the supplier.
- 12.2. If a third party raises a claim against us in this respect, the supplier shall indemnify and hold us harmless from and against such claims upon first written request; we are not entitled to conclude an agreement of any kind, in particular a settlement, with such third party without the supplier's consent.
- 12.3. The supplier's obligation to indemnify us includes any and all expenses that we necessarily incur due to or in connection with the claim raised by a third party.
- 12.4. The limitation period is ten years as of the conclusion of the contract.
- 12.5. If license fees have to be paid in connection with the services, they shall be borne by the supplier.

## 13. Spare parts

- 13.1. The supplier shall keep spare parts for the products delivered to us in stock for a period of 5 years minimum after the delivery.
- 13.2. If the supplier plans to cease the production of spare parts for the products delivered to us, they shall notify us without undue delay when the decision to cease production is made. This decision has to be made - notwithstanding clause 13.1. above - at least 10 months before the production is discontinued.

## 14. Retention of title in material provided and tools, confidentiality

- 14.1. Any materials, parts, containers and special packaging provided by us remains our property and shall only be used for their intended purpose. Materials shall be processed and parts shall be assembled on our behalf. If our goods subject to retention of title are processed together with other items that are not our property, we obtain co-ownership in the new item in the proportion of the value of the items provided (purchase price plus VAT) to the value of the finished product at the time of such processing.
- 14.2. If the item provided by us is inseparably combined with other items that are not our property, we obtain co-ownership in the item in the proportion of the value of the item subject to retention of title (purchase price plus VAT) to the other combined items at the time of such combination. If the combination is done in such a way that the supplier's item has to be considered as the main object, it is agreed that the supplier shall transfer co-ownership to us on a pro rata basis; the supplier holds the sole ownership or the co-ownership on our behalf.
- 14.3. We retain the property in our tools; the supplier shall use the tools exclusively for the production of the goods ordered by us. The supplier shall insure the tools in our property at their replacement value against fire and water damage and theft. At the same time, the supplier hereby assigns all claims for compensation from such insurance to us; we hereby accept this assignment. The supplier shall carry out any necessary maintenance and inspection work as well as any service and repair work on our tools at the supplier's expense in due time. The supplier shall notify us of any malfunction immediately; if the supplier culpably omits this, any claims for damages remain unaffected.
- 14.4. If the security interests to which we are entitled according to clause 14.1. and/or clause 14.2. above exceed the purchase price of all our unpaid goods subject to retention of title by more than 10%, we shall release and discharge the security interests at our discretion at the supplier's request.
- 14.5. The supplier shall keep any and all business-related or technical documents, information, images, drawings, calculations and other documents that are disclosed to them by us within the framework of the contractual relationship strictly confidential. They may not be disclosed to third parties without our express consent. This confidentiality obligation continues to apply after the execution of the present contract; it ends when and to the extent that the manufacturing knowledge disclosed in the business-related or technical documents, information, images, drawings, calculations and other documents provided has become public knowledge.
- 14.6. The supplier may not refer to the business relationship in advertising material, brochures, etc., nor exhibit objects manufactured for us without our prior written consent.
- 14.7. The supplier shall impose the obligations according to this clause 14. on its sub-contractors.

## 15. Threat to performance

If the supplier's economic situation deteriorates to a degree that constitutes a serious threat to the execution of the contract during the term of the order, if the supplier suspends their payments (also temporarily), or if bankruptcy proceedings or judicial or extrajudicial settlement proceedings are filed, we are entitled to rescind the part of the contract that has not yet been fulfilled. If partial performance is of no interest to us, we are entitled to fully rescind the contract.

## 16. Foreign trade law and supplier information

- 16.1. The supplier shall provide the following information in quotes and order confirmations:  
Information whether the delivered goods are subject to export license and the relevant index number pursuant to German export law; information on the registration of the supplier's product in the US CCL, if relevant, and the corresponding index number; information whether the ordered goods are subject to export license pursuant to the applicable EC Dual Use Regulation and the corresponding index number, commodity number; country of origin of the goods.  
In the case that we cannot obtain the necessary export license, we expressly reserve the right to rescind the contract.
- 16.2. The supplier shall comply with any applicable substance prohibitions pursuant to legal regulations.
- 16.3. The supplier shall declare the substances contained in their products (indicating the corresponding CAS numbers and weight proportions in a homogenous material), if these substances are included in one of the following legal regulations:
  - *Chemikalien-Verbotsverordnung* [Chemicals Prohibition Ordinance] (implementation of Directive 76/769/EEC and amendments)
  - *Altfahrzeug-Verordnung* [End-of-life Vehicle Ordinance] (implementation of Directive 2000/53/EC)
  - *Elektro- und Elektronikgerätegesetz* [Electrical and Electronic Equipment Act] (implementation of Directive 2002/95/EC and Directive 2002/96/EC)
  - *FCKW-Halon-Verbots-Verordnung* [CFC Halon Prohibition Ordinance] (implementation of Regulation (EC) 2037/2000)
  - *Keramikfaser-Verordnung* [Ceramic Fibre Ordinance]
- 16.4. The supplier shall confirm the origin of the goods in compliance with the statutory provisions, e.g. by means of a supplier declaration or a declaration of origin or a EUR.1 certificate. In the supplier declaration, the supplier shall indicate the originating status of their goods in accordance with the applicable origin regulations of the country of destination specified by us.

**17. Technical documentation**

- 17.1. Unless otherwise agreed, the technical documentation and all the required logs shall be delivered as part of the main delivery.
- 17.2. The technical documentation shall be prepared in accordance with the EC Machinery Directive and comply with the generally accepted engineering standards.

**18. Software**

- 18.1. Software shall be delivered to us on customary data carriers in a machine-readable code with user documentation.
- 18.2. For software developed specifically for us, the source code and manufacturer documentation shall also be delivered to us. Copies of the source code and the manufacturer documentation shall be delivered to us upon acceptance and shall correspond to the programme version as of the end of the test phase.
- 18.3. Any changes to the software made within the framework of the liability for defects shall be adopted by the supplier into the source code and the manufacturer documentation without undue delay; a copy of the updated version shall be provided to us without undue delay.

**19. Rights of use**

- 19.1. The supplier shall grant us an irrevocable, exclusive, indefinite and geographically unrestricted right of use that includes every known type of use in any software developed for us or parts thereof and in any other deliverables, including the right to rework, reproduce, alter, extend and grant simple rights of use to third parties, unless restrictions are imposed by the following provisions.
- 19.2. If third-party rights in third-party programmes or other third-party deliverables that have been included in the services provided are opposed to the acquisition of a right of use according to the above clause, the scope of our right of use shall be agreed accordingly in the contract.
- 19.3. The supplier is authorised to keep using standard programmes, programme modules, tools and the supplier's know-how used in the development of the deliverables, also for third-party orders. The supplier may not reproduce, alter or otherwise use all or part of the deliverables and solutions developed for us.
- 19.4. The supplier is authorised to publish deliverables of any kind developed for us - also in part - only with the prior written consent of the client.

**20. Privacy**

- 20.1. Personal information shall be processed by the supplier in compliance with the relevant statutory provisions.
- 20.2. Personal information is stored by us in compliance with the relevant statutory provisions.

**21. Place of jurisdiction, place of performance and applicable law**

- 21.1. The place of jurisdiction for any and all claims arising from and in connection with the contract is our registered office. However, we reserve the right to file a complaint at the supplier's statutory place of jurisdiction.
- 21.2. Unless otherwise indicated in the order, the place of performance is the place of receipt specified in the order, or alternatively, our registered office.
- 21.3. Any and all legal relationships between the parties are exclusively subject to the law of the Federal Republic of Germany; private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded.

**22. Miscellaneous**

- 22.1. If one or more of the provisions of the present terms and conditions or the contract concluded between us and the supplier are or become invalid, in part or in their entirety, the validity of the remaining provisions shall remain unaffected thereby. The invalid provision shall be replaced by an admissible regulation that comes as close as possible to the economic intent of the invalid provision.
- 22.2. We are exempt from the obligation of tax deduction pursuant to § 34b para. 1 EStG [Income Tax Act] only if the supplier produces a valid certificate of exemption of the competent tax office issued in the supplier's name. Submission of a copy of the certificate of exemption is sufficient, provided that the certificate of exemption is not issued for a specific order.