

## General Terms and Conditions of Purchase (February 2004) of Stahlberg GmbH

### § 1 General - Scope of Application

**(1)** The following Terms and Conditions of Purchase shall apply exclusively to legal relations between a supplier and us. We shall not recognize any terms and conditions of the supplier that conflict with or deviate from our Terms and Conditions of Purchase or supplement them unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Purchase shall also apply if we accept the supplier's delivery without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from our Terms and Conditions of Purchase.

**(2)** All agreements made between us and the supplier for the purpose of executing this contract as well as any ancillary agreements, amendments, termination or withdrawal from the contract or its cancellation must be made in writing. This shall also apply to the waiver of the written form requirement or its amendment.

**(3)** Our Terms and Conditions of Purchase shall only apply to persons within the meaning of Section 310 (1) sentence 1 of the German Civil Code (BGB) (entrepreneurs). **(4)** Our Terms and Conditions of Purchase shall also apply in their currently valid version to all future transactions between us and the Supplier.

### § 2 Offer - Offer Documents

**(1)** The supplier shall be obliged to accept our order within a period of two weeks. A contract with us shall only be deemed concluded when the supplier confirms our order without reservation.

**(2)** We reserve all property rights, copyrights and other rights of use to the illustrations, drawings, calculations and other documents made available to the supplier by us or at our instigation in connection with the offer. They may not be made accessible to third parties without our express written consent. They are to be used exclusively for production on the basis of our order. After completion of the order, they and any other information relating to this order shall be kept strictly secret or, upon our written request, destroyed or returned to us, including any copies made thereof.

### § 3 Prices - Terms of Payment

**(1)** The price stated in our order shall be binding. The prices quoted by us shall be Euro „free domicile“ including internal and external packaging and including value added tax. Upon our request, the supplier shall be obliged to take back the packaging at its own expense and risk within the scope of the respective currently applicable ordinance on the avoidance of packaging waste („Packaging Ordinance“). Ownership of packaging shall not pass to us unless this is expressly agreed in writing.

**(2)** We can only process invoices if they state the order number shown in our order. The supplier shall be responsible for all consequences arising from non-compliance with this obligation, unless he can prove a lack of fault on his part.

**(3)** Unless otherwise agreed in writing, we shall pay the purchase price within 14 days, calculated from delivery and receipt of the invoice, with a 2% discount or net within 30 days of receipt of the invoice.

**(4)** The date of our receipt stamp shall be decisive for the receipt of the invoice.

**(5)** We shall be entitled to rights of set-off and retention to the extent provided by law.

### § 4 Delivery time

**(1)** The delivery time specified in the order shall be binding.

**(2)** The supplier is obliged to inform us immediately in writing if circumstances arise or become apparent to him which indicate that the stipulated delivery time cannot be met.

**(3)** In the event of a delay in delivery, we shall be entitled to the statutory claims. In particular, we shall be entitled to claim damages in lieu of performance or to withdraw from the contract after the fruitless expiry of a reasonable grace period. If we demand damages, the supplier shall be entitled to prove that he is not responsible for the breach of duty.

## § 5 Transfer of risk - documents

- (1)** Unless otherwise agreed in writing, delivery shall be made free domicile.
- (2)** The supplier shall be obliged to state our order number exactly on all shipping documents and delivery bills. If he fails to do so, delays in processing shall not be unavoidable for which we shall not be liable.
- (3)** Costs for insurance shall only be borne by us if this has been agreed with us in writing in advance. Insurance shall in no case release the supplier from his personal liability towards us.

## § 6 Inspection for Defects - Liability for Defects

- (1)** We shall be obliged to inspect the goods within a reasonable period of time for any deviations in quality and quantity. The complaint shall be deemed to have been made in good time if it is received by the supplier within a period of five working days, calculated from receipt of the goods or, in the case of hidden defects, from discovery.
- (2)** We shall be entitled to the statutory claims for liability for defects in full. We shall be entitled to demand from the supplier, at our discretion, the rectification of defects or a replacement delivery. The supplier shall be obliged to bear all expenses necessary for the purpose of rectification of defects or replacement delivery. The right to claim damages, in particular damages in lieu of performance, is expressly reserved.
- (3)** Subsequent performance by the supplier shall be deemed to have failed in all cases after the first, even partially failed attempt. We shall be entitled to remedy the defect ourselves at the Supplier's expense if there is imminent danger or special urgency.
- (4)** The costs to be borne by the Supplier in connection with the rectification of defects shall also include the expenses for packaging, freight and delivery, the work expended for dismantling and installation, travel expenses and the performance of the rectification of defects at our premises.
- (5)** Our claims for defects shall become time-barred within two years from the transfer of risk, unless the statutory limitation period is longer. The statute of limitations shall be suspended if the Supplier, with our consent, inspects the existence of a defect or its rectification until it notifies us of the result of the inspection or declares the defect rectified or refuses to continue the rectification. In the event of rectification or replacement of defective individual parts by the supplier, the warranty period shall start anew for these parts.
- (6)** The supplier warrants the careful and proper performance of the contract, in particular the compliance with the specification determined by us (in particular technical delivery regulations) and our other execution regulations in accordance with the recognized state of science and technology, as well as the quality and expediency of the delivery with regard to material, construction and execution and the documents belonging to the delivery (drawings, plans, etc.).
- (7)** The supplier shall in any case be liable for the supplies and services procured by it as for its own supplies or services, even if it is not at fault. This shall apply in particular with regard to defects.
- (8)** The supplier shall indemnify us against all claims of our own customers which our customer asserts on the basis of advertising statements made by the supplier, one of the supplier's upstream suppliers (as a manufacturer within the meaning of Section 4 (1) or (2) of the Product Liability Act) or an agent of one of the aforementioned and which would not exist or would not exist in this type or amount without the advertising statement. This provision shall apply irrespective of whether the advertising statement is made before or after the conclusion of this agreement.

## § 7 Product Liability-Exemption

- (1)** Insofar as the supplier is responsible for product damage, he shall be obliged to indemnify us against claims for damages by third parties upon first request to the extent that the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.
- (2)** Within the scope of liability pursuant to paragraph (1), the Supplier shall also be obliged to reimburse any expenses pursuant to Sections 683, 670 BGB and Sections 830, 840, 426 BGB arising from or in connection with a recall action carried out by us. We shall inform the supplier about the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment. Other statutory claims shall remain unaffected.
- (3)** The supplier undertakes to maintain a product liability insurance with a lump sum coverage of € 10 million per personal injury/property damage. If we are entitled to further claims for damages, these shall remain unaffected.

## § 8 Industrial property rights

- (1) The supplier shall be responsible for ensuring that no third party rights are infringed in connection with his delivery.
- (2) If a third party asserts a claim against us for infringement of its rights, the supplier shall be obliged to indemnify us against such claims upon first written request. We shall not be entitled to make any agreements with the third party - without the supplier's consent - in particular to conclude a settlement.
- (3) The Supplier's obligation to indemnify us shall relate to all expenses necessarily incurred by us as a result of or in connection with the claim by a third party.
- (4) The limitation period for claims under this provision shall be ten years, calculated from the conclusion of the contract.

## § 9 Retention of Title - Provision - Tools - Confidentiality

- (1) Insofar as we provide the Supplier with parts, materials or other working or auxiliary materials, we reserve title thereto. Processing or transformation by the supplier shall be carried out exclusively in our name and interest. If our reserved goods are processed or transformed together with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of our reserved goods (purchase price plus VAT) to the other objects at the time of processing or transformation.
- (2) If our reserved goods are inseparably mixed, blended or combined with other items not belonging to us, we shall acquire co-ownership of the resulting uniform item in the ratio of the value of our reserved goods (purchase price plus VAT) to the other items at the time of mixing, blending or combining. If the mixing, blending or combining is carried out in such a way that the supplier's item is to be regarded as the main item, it shall be deemed agreed that the supplier transfers co-ownership to us on a pro rata basis. The supplier shall keep the sole ownership or the co-ownership for us.
- (3) We retain title to tools. The supplier is obliged to use the tools exclusively for the production of the goods ordered by us. The supplier is obliged to insure the tools belonging to us at replacement value against fire, water and theft damage at his own expense. At the same time, the supplier hereby assigns to us all claims for compensation arising from this insurance. We hereby accept the assignment. The supplier shall be obliged to carry out any necessary maintenance and inspection work on our tools as well as all maintenance and repair work at his own expense and in good time. He shall notify us immediately of any malfunctions. If he culpably fails to do so, we reserve the right to claim damages.
- (4) Reproductions of materials provided may only be made with our prior written consent. The reproductions shall become our property upon their production.
- (5) The supplier shall have no right of retention to the materials provided, irrespective of the reason.
- (6) The supplier is obliged to keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be disclosed to third parties with our express consent. The obligation to maintain secrecy shall also apply after the execution of this contract. It shall expire if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known.
- (7) Insofar as the security rights to which we are entitled pursuant to paragraph (1) and/or paragraph (2) exceed the purchase price of all our reserved goods not yet paid for by more than 10%, we shall be obliged to release the security rights at our discretion at the Supplier's request.

## § 10 Place of Jurisdiction - Place of Performance - Choice of Law

- (1) If the supplier is a merchant or has no general place of jurisdiction in the Federal Republic of Germany, our place of business shall be the place of jurisdiction. However, we shall also be entitled to sue the supplier at the court of his place of residence.
- (2) Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.
- (3) The relations between us and the supplier shall be governed exclusively by the law of the Federal Republic of Germany.