

## **General Conditions of Purchase of SMS MEVAC GmbH**

The following conditions apply to our purchase orders unless otherwise agreed upon in writing.

Other terms, including those in subsequent order confirmations, of the Contractor shall only apply if they have been expressly acknowledged by us in writing; without express written acknowledgement we shall not be bound by them even if they are mentioned in the order confirmation. The same also applies when we fully or partly accept the ordered product or effect payment. The implementation of the purchase order by the Contractor shall be considered as an acknowledgement of our terms below.

### **1. Quotation**

The detailed quotations (two-fold) must be submitted with the required documents on the required dates without involving any costs and liabilities for us.

### **2. Purchase orders**

Only written purchase orders signed by us as well as contracts signed by us and the Contractor shall be legally binding for us.

Oral agreements or those by telephone require our written confirmation.

The purchase order may not be used for advertising purposes.

### **3. Standards and other regulations**

In the event of the existence of relevant regulations, in particular from authorities and specialist associations (DIN standards, VDE regulations, VDI guidelines or similar sources), these must be observed. If works standards or other standards are made known to the Contractor by us, these shall have priority.

### **4. Safety regulations**

The Contractor warrants that the services and supplies to be rendered by him shall be in conformity with the existing statutory provisions, with all regulations on the prevention of accidents and the regulations of the employers' liability insurance associations about which the Contractor must inform himself.

### **5. Prices**

Unless otherwise agreed upon, the prices shall be deemed fixed prices for the duration of the agreement.

### **6. Performance of delivery**

The goods must be delivered by the Contractor in a neutral form and packaging. We reserve the right to assign our own designations with our own numbering.

Items delivered ahead of schedule as well as part deliveries require our written approval. The costs for part deliveries shall be borne by the Contractor. The Contractor shall at our request store the goods for three months beyond the agreed delivery date without such storage incurring costs to us. The Contractor assumes responsibility for any danger to the goods stored on his premises.

The Contractor shall ensure that spare parts can be procured even after ten years have lapsed.

### **7. Shipment**

In the event that the purchase order includes special delivery conditions, technical or testing conditions, specifications, packaging, marking and shipment instructions, these enclosures shall constitute an integral part of the purchase order.

If shipment documents of the Contractor are incorrectly issued or should said documents not contain the department, purchase order number, reference line or if other shipment instructions have not been observed, all ensuing costs such as demurrage, conversion fees etc. shall be borne by the Contractor.

Part deliveries must be indicated accordingly in the shipment documents.

### **8. Invoicing and payment**

The invoice must be separately submitted to us two-fold, that is, it must not be attached to the consignment. Invoices for partial delivery must be marked accordingly. Unless otherwise agreed upon, our invoices are payable within 14 days following receipt of goods and invoice with 2% discount or 30 days following receipt of goods and invoice net.

We are entitled to request bank guarantees or other securities for advance payments. The cost of this shall be borne by the Contractor. Agreed partial payments must be requested separately.

We are entitled to offset our own claims against the claims of our suppliers on whatever the legal grounds.

### **9. Objections**

The Contractor shall waive objection to delayed notice of defect.

### **10. Provision of material**

In the event that materials and parts are made available by us free of charge for the performance of the contractual services, the Contractor shall confirm the receipt of goods forthwith to us, label the goods as our property, hold them in trust and use them exclusively for the performance of the contractual services. The Contractor bears the risk for the materials and parts provided by us.

**11. Warranty**

The Contractor is liable for the completeness of the delivery and for the use of good material both for the design and the agreed properties of the delivered goods which must meet the highest standards and state-of-the-art technology and must function properly. Any design modifications which the Contractor proposes after confirming the purchase order may only be made with our written approval.

The Contractor is liable for the completeness, correctness and expert implementation of his own technical documents. If the implementation of erection activities or the expert technical management of erection by the Seller's specialist personnel has been contractually agreed upon, the Contractor shall be liable for the quality of the work performed and for the correct and expert commissioning of the plant.

Unless otherwise stipulated in the contract, the warranty period shall be 24 months following delivery.

The Contractor is obliged to eliminate for own account and forthwith after receipt of our message any defects of which he has been notified at the latest 30 days after the expiry of the warranty period mentioned. The defects shall at his discretion be eliminated either through repair or through replacement of the defective parts. If the Contractor does not eliminate the defects on time or properly despite our request, we have the right to eliminate them or have them eliminated, while the other rights from the warranty remain unaffected. Alternatively, we also have the right to rescind the agreement.

After elimination of defects, the warranty period starts anew for the replaced or rectified parts.

Concealed defects can be asserted also after the expiry of the warranty obligation immediately after they have been discovered.

**12. Intercompany clearing clause**

We are entitled to offset claims, due or not due and also future ones, which MAN Aktiengesellschaft, Munich, SMS DEMAG AG, Düsseldorf, or a company in which these have a direct or indirect share of at least 50%, are entitled to vis-à-vis the Contractor or the latter vis-à-vis any of the aforementioned companies (the Contractor shall at any time on request receive information about the companies involved).

**13. Assignment, transfer of contractual obligation**

Without our express written consent, the Contractor may not transfer his contractual obligation or assign his contractual claim fully or partially to third parties.

Insofar as the Contractor obtains supplies or services from sub-suppliers, he is obliged to inform us thereof for approval.

**14. Delivery period**

The agreed delivery dates are binding, with the exception of force majeure. If the supplier realises that he cannot meet the delivery date, he shall inform us forthwith of all circumstances known to him which make it impossible to meet the delivery dates in order to thereby enable us to make other arrangements in good time.

In case of deferred delivery, we are entitled without granting a grace period to claim subsequent deliveries and damages due to deferred delivery or to demand damages for non-performance or to withdraw from the contract.

**15. 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. as well as approved strikes.

The contracting party who was unable to fulfil 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 Contractor is obliged to inform us of its elimination and to continue with the contract implementation. Rejects, delay in sub-supplies shall not be considered force majeure and do not justify the need to exceed the confirmed delivery date.

If the aforementioned circumstances, which could not be presumed, last more than three months for goods for which the delivery periods do not exceed one year and longer than six months for goods for which the delivery periods amount to more than 12 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.

**16. Drawings, calculations, plans and similar items**

a) The drawings, calculations, plans etc. to be provided by the Contractor can be obtained from the order letter and the relevant supplementary conditions. This definitely also includes the documents required to obtain approvals from authorities.

b) The inspection of the documents by us according to Paragraph a) and our inspection mark does not release the Contractor from his warranty obligation. The same applies to proposals and requests for modifications submitted by us.

All drawings, bills of materials, schematic circuit diagrams and spare parts lists must have our drawing headers and must be prepared on our standard forms. The Contractor shall obtain the standard forms from us.

**17. Technical documentation**

All drawings, models, calculations and technical descriptions supplied to the Contractor by us are our intellectual property and may not be made accessible to third parties without our consent. Should the business transaction not come to realization for some reason, these technical documents must be returned to us.

In the event that the business transaction does come to fruition, the technical documents must be returned to us forthwith after being used for the relevant delivery.

**18. Secrecy**

All documents made available to the Contractor by us for the implementation of the order, regardless of the type and origin, must be kept strictly confidential by the Contractor. They may not be published or reproduced without our consent nor may they be used for another purpose than the one originally planned. Publication of excerpts is also prohibited. Without our written approval, the Contractor may not use, exploit or patent the know-how originating from us or worked out together with us or worked out by the Contractor specially for the implementation of our order at our expense. The Contractor is liable to the Ordering Party unconditionally for damage caused to us owing to a violation of this obligation.

**19. Violation of patent rights**

The Contractor declares that the goods constituting the subject-matter of this purchase order do not show any patent-related or other legal defects. He furthermore declares that he shall reimburse us for all costs incurred if a third party should raise claims from patent rights or due to other legal defects. It is deemed agreed that the Contractor shall grant us complete support against any likely claims of third parties.

**20. Place of payment and choice of venue**

Place of payment and venue is Essen.

**21. Application of German law**

All legal relations between us and the Contractor shall be subject only to German law, under exclusion of foreign law and the UN Convention on Contracts for the International Sale of Goods.

**22. Partial ineffectiveness**

Despite the ineffectiveness of individual provisions, a contract concluded on the basis of these conditions shall remain fully effective in its remaining parts.

The above also applies to any terms and conditions stipulated in our ordering letter which have priority insofar that they are not in conformity with the present printed terms and conditions.