

MSA AUER GmbH – General Purchase Conditions

1. General:

1.1 These General Purchase Conditions apply for all of our present and future inquiries and orders as well as all present and future supply contracts entered with the supplier as well as for all other agreements concluded with the supplier in connection with orders. Any conditions of the seller are hereby rejected, including in the case that they are provided to us in a letter of confirmation or otherwise, or we accept the supply or performance of the seller without again rejecting the conditions of the supplier.

1.2 Any oral ancillary agreements, deviations from these conditions as well as additions to or the exclusion of these conditions must be in writing to be valid. This also applies to the contracting out of this writing requirement.

1.3 The Incoterms as amended at the time of conclusion of the contract shall apply, unless these General Purchase Conditions contain any contrary regulation.

2. Inquiries, Offers, Orders

2.1 Our inquiries are without obligation. Our orders are only binding on us if and to the extent that we have issued them in writing or confirmed them in writing.

2.2 If the offer made by the supplier is different from our inquiry, or if the supplier's acceptance or order confirmation deviates from our order, the supplier shall make express reference to this. The submission of offers shall be free of charge and without obligation for us; for visits, the production of plans, drawings and similar, no remuneration will be paid in the absence of an express written agreement.

3. Delivery and Payment Terms

3.1 Deliveries

3.1.1 Unless otherwise agreed, delivery shall be made "free domicile" (*frei Haus*); the seller shall bear the risk until the delivery of the goods at the place of destination. If delivery "ex works" is agreed upon – provided purchase order does not stipulate differently – the supplier shall choose the most time and cost effective mode of transportation. We point out that we are a SVS prohibited client (*SVS-Verbotskunde*). Should the supplier arrange for transportation of goods, he is expressly instructed to waive coverage for damages as far as the fees are charged to our company. The transport insurance is covered by us in any case.

3.1.2 Packaging material will be returned to the supplier or disposed of at his expense.

3.1.3 Agreed delivery dates and deadlines are binding. The supplier has the responsibility to inform us about possible delays in advance, stating a new delivery date and the corrective measures taken. This will not cancel the obligation of meeting the agreed delivery deadline.

3.1.4 The unreserved acceptance of a late delivery shall not constitute a waiver of any of our rights resulting from late delivery.

3.2 Terms of Payment

3.2.1 Invoices are to be forwarded in duplicate on the day of goods dispatch to our Invoice Control Department. Payment shall be made by our choice 8 days after invoice receipt with deduction of 4 % or 14 days after receipt with deduction of 3 % or 45 days net.

3.2.2 If receipt of goods and receipt of invoice take place on separate days, the later date is the criterion for the calculation of the payment periods mentioned in clause 3.2.1.

3.2.3 We are not held to accept deliveries before the delivery schedule agreed upon. This also applies to partial deliveries and call orders. If early delivery is accepted, the agreed upon delivery time rather than the actual delivery time is decisive for the calculation of the payment periods.

3.2.4 Over and under-shipments of +/-10 % are acceptable.

4. Defects

4.1 The notification of defects which are detectable upon an orderly inspection of the goods after delivery must be made within one month following delivery; other defects are to be notified by us within one month following their detection.

4.2 Rights arising from defects known at the time of acceptance shall not be excluded, even if no reservation to such effect is declared at acceptance.

4.3 If any defect in quality becomes apparent within six months after passing of the risk, then the relevant item shall be presumed to have already been defective at the time of the passing of the risk except where such presumption is irreconcilable with the nature of the item or defect.

4.4 In the event of any justified defect report, we may claim a flat-rate fee for warranty handling in the amount of Euro 100.00, unless the supplier proves that no damage occurred or the damage is much less than the flat-rate fee. The right to claim any further damages as well as any further rights shall be reserved.

4.5 If the supplier allows any reasonable period of grace granted to the Supplier to expire without having cleared up the defect or having delivered defect-free goods, then we may elect, at the cost of the supplier, to clear up such defect or cause it to be cleared by any third party. This shall not affect either the statutory provisions pursuant to which a period of grace is not required nor any statutory warranty remedy including recourse claim, at the cost of the seller, remove the defect ourselves or have it removed by a third party.

4.6 The warranty obligation of the supplier will not be affected by our approval of his plans, design drawings, technical calculations etc.

4.7 The limitation period for defect claims including rights of recourse is three years, except where statutory limitation periods are longer. The statutory provisions concerning the suspension of the limitation period for rights of recourse shall remain unaffected.

5. Working Devices, Information

5.1 Working devices (forms, tools, gauges and other devices) which are our property and supplied to contractors for the performance of work, are to be stored and maintained by contractor carefully. These devices are to be insured adequately by the contractor on his behalf against theft, damage by fire and water.

5.2 Maintenance work caused by wear and tear or due to unavoidable damage, are to be reported to us immediately, stating the overhaul costs. We reserve the right to inspect the scope of the necessary overhauls before performance of the work. This is also applicable to working devices for which we have only partially taken over costs.

5.3 We retain all proprietary rights and copyrights for all illustrations, drawings, calculations, methods of analysis, prescriptions and other information which are issued to the contractor orally or in writing, for the manufacturing of the merchandise, as well as to all documents established by contractor in accordance with special information obtained through us (in the following referred to as "information"). The information shall be kept secret by the contractor and shall not be used, copied or forwarded to third parties for other purposes. It is to be returned to us immediately upon request. If no delivery is made, the supplier shall return the information to us without request. He is liable for all damages caused due to violation of this obligation. Drawings including all documentation necessary for the installation, use, maintenance or repair of merchandise are to be supplied by contractor in a timely manner, without specific request or charges.

6. Contractual Penalty

If a contractual penalty is agreed upon, we can still demand payment of the penalty forfeited even if we do not reserve this right upon acceptance of performance; the contractual penalty must, however, be asserted no later than at the time of the final payment.

7. Indemnification against Manufacturer's Liability Claims and Product Liability Claims

7.1 The supplier shall indemnify us against any manufacturer's liability or product liability claims towards any third party to the extent that the supplier is responsible for the product defect that had given rise to such relevant claim.

7.2 The supplier undertakes to take out product liability insurance with a reasonable coverage amount.

8. Supplier's Set-Off and Retention Rights, Exclusion of Assignment

8.1 The supplier shall have a right of set-off against any claim only if such claim is either undisputed, has been awarded in a final and unappealable judgement or is ready for final deciding by the court. The supplier shall have a right of retention only with regard to those claims that are undisputed, have been awarded in a final and unappealable judgement or are pending and ready for judgement (*entscheidungsreif*), and arise under the same contract with us

8.2 The assignment of claims of the seller against us to third parties is excluded; Section 354a of the German Commercial Code (*Handelsgesetzbuch*) shall remain unaffected.

9. Liability

9.1 For damages caused by intention or gross negligence of our legal representatives or managerial employees, as well as for damages due to personal injury, we shall be liable in accordance with the statutory provisions. In the event of intention or gross negligence of any ordinary agent employed in our performance (*einfache Erfüllungsgehilfen*) as well as in the event of slight negligence causing the violation of essential contractual duties which are indispensable for the achieving of the contractual purpose and on the strict compliance with which the supplier must therefore be able to rely, we shall be liable in accordance with the statutory provisions, limited to such damages as were foreseeable for us at the time of entering the contract in terms of type and scope; in the case of default of payment, this shall include the statutory interest rate. As for the rest, claims of the supplier for compensation of direct or indirect damages – irrespective of the legal ground including any damages claims for breach of any pre-contractual duty as well as under tort – are excluded.

9.2 The limitations of liability contained in this Section 9 shall also apply to any liability towards the supplier of our legal representatives, managerial employees and our other agents employed in our performance (*Erfüllungsgehilfen*).

10. Applicable Law, Venue

German law shall apply, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Provided the supplier is a merchant, a public law entity or a public law special fund, the Municipal Court of Berlin-Charlottenburg or the district court above this court shall be the exclusive place of venue for all disputes directly or indirectly arising out of the contractual relationship; however, instead of the aforementioned court, we are entitled to call on any other competent court in accordance with the statutory provisions.

11. Contract Award

Upon contract award to external contractors the following accident-prevention regulations of VBG 1 "General Provisions" and Contract Instructions are applicable:

§ 5 VGB1: "In the case that the enterprise awards a contract for:

1. the planning, manufacturing, changing or the overhaul of equipment,
2. the delivery of technical working devices or technical merchandise,
3. the planning or design of technical working procedures,

it shall award the contract to the contractor in writing, taking into consideration the rules and regulations outlined in Section 2, para. 1, sentences 1 and 2. In the case of technical items, as outlined in Section 2, para. 2, the contractor has to furnish a warranty certificate of equal safety."

§ 2 VBG1: (1) The enterprise has to take appropriate measures for accident-prevention which comply with the accident-prevention regulations outlined herein and other accident-prevention regulations applicable to it and which comply with the generally recognised regulations for technical safety and workplace first aid. As far as other requirements are made legal regulations, in particular concerning measures for workplace safety, they shall remain unaffected.

(2) Technical products which do not comply with the regulations for accident prevention may be used, provided they warrant in their composition the same security in a different way (technical products are technical working devices and parts thereof).

12. Ordering of Technical Working Devices

For every ordering of technical working devices the following order instructions are additionally applicable:

"the foregoing order is awarded only under the condition that the performance complies with the valid European and German laws. In particular machines and equipment are to be delivered in accordance with the EC Machinery Directive 89/392/EEC and its associated standards. Alternatively the delivery can comply with the accident-prevention-regulations and the EC User Directive for Working Devices 89/655/EEC."

13. Award of Contracts for Modification or Overhaul

The following order instructions apply for every award which involves the employment of external personnel for performance on our premises: "The award is made under the condition that the contractor complies with the accident-prevention regulations, the regulations for workplace safety, as well as the generally recognised rules for technical safety and workplace first aid."

14. Co-ordination of Performance by external contractors

Should the award of a contract involve the performance of external personnel on our premises, and accordingly a risk of reciprocal endangerment might be incurred as a consequence, the requisitioner shall appoint an individual to co-ordinate the performance (Referred to as the "Co-ordinator"). Generally the requisitioner himself is the co-ordinator. It must be insured that the co-ordinator has instruction authority vis-à-vis the contractor and our personnel. Upon co-ordination of the work, special attention shall be given to the avoidance of danger. Danger can occur during the execution of the following work, for example: work on the ventilation system, handling of flammable liquids and glues, work in the area of laboratories, work in radioactive control and inspection areas, work on the fire-extinguishing sprinkler system, work that involves welding or cutting, work that takes place in areas with risks of explosion, work that takes place in areas of CO₂-extinguishing systems, work that takes place in storage rooms for chemicals.

NOTE

Information concerning our seller is saved and processed on computer as far as this is necessary for the orderly performance of the contractual relations.