

# General Purchasing Conditions of

- Emil Schmid Maschinenbau GmbH & Co. KG,
- EST Elektronische Schraub- + Steuerungstechnologie GmbH & Co. KG,
- Schmid Cleantech GmbH,
- Schmid Machinery Co. Ltd.
- Schmid E-Motive Technologies S.r.l.

## § 1

### Scope of Terms

- (1) The following General Purchasing Conditions (hereinafter referred to as **"GPC"**) shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as **"Supplier"**).
- (2) Our GPC shall apply exclusively; we shall not accept any conflicting or different GPC of the Supplier, unless agreed upon in writing. Our GPC shall also apply when we accept deliveries of the Supplier without reservation while being aware of conflicting or different terms of the Supplier.
- (3) Our GPC shall apply to all deliveries and services performed to us, unless agreed upon otherwise.
- (4) All agreements agreed upon between us and the Supplier for the purpose of executing a contract shall be set out in writing in a contract.
- (5) Within a permanent business relationship between the Supplier and us, the following GPC shall also apply to all our future orders without requiring any further reference or agreement.

§ 2

**Offer, Order, Conclusion of Contract, Call-Offs**

- (1) The creation of offers and cost estimates by the Supplier shall be free of cost and non-binding for us.
- (2) Offers to us shall include all relevant details that are necessary for an assessment of its quality and price.
- (3) Delivery contracts (order and acceptance) and call-offs as well as their amendments and additions require written form; oral and telephonic orders require our written confirmation in order to be valid; this shall also apply in case of a subsequent amendment of orders already placed.
- (4) If the order or the call-off is not confirmed in written form within 3 working days after receipt by the Supplier, we are entitled to cancel the order without the Supplier being able to derive any claims from this.
- (5) A confirmation deviating from our order represents a new offer which requires our renewed consent in writing.
- (6) We are entitled to request from the Supplier modifications of the subject matter of the contract with respect to quality and quantity to a reasonable extent. Any effects resulting hereof, in particular with respect to higher and lower costs and delivery date, shall be appropriately settled by agreement.
- (7) We reserve ownership and copyright in and to all documents provided to the Supplier; they shall not be made accessible to third parties without our expressed written consent. They shall exclusively be used for the delivery on the basis of our order. Towards third parties, they shall be kept confidential; in addition, § 9 shall apply.
- (8) The order shall be based on the agreed specifications of the products. In particular, our consent to prior delivered samples, patterns, descriptions or product examples as well as those specifications and product descriptions which are - e. g. through

designation or reference in our order – subject of the contract are considered an agreement concerning quality.

- (9) The Supplier shall be obligated to comply with all the statutory provisions applicable in the EU and in the destination country of the delivery. He shall also be obligated to comply with the state of the art as applicable at a time.
- (10) The Supplier shall be obligated to comply with the Code of Conduct of the Business Social Compliance Initiative (BSCI – [www.bsci-eu.org](http://www.bsci-eu.org)). In particular, it will ensure that children and youths are employed with adherence to the provisions of the International Labour Organization (ILO), the United Nations (UN) and the national law. It will also impose this obligation on its suppliers.

### § 3

#### Prices and Terms of Payment

- (1) The price shown in the order shall be binding. It shall include all services and ancillary services of the Supplier as well as all additional charges. Unless otherwise agreed upon in writing, the price shall include delivery “free house”, including packaging.
- (2) We can only process invoices if they contain – according to the specifications of our order – the article number shown on our order form; for any and all consequences arising due to non-compliance with this duty, the Supplier shall be responsible, unless it proves that it is not to be held responsible for these consequences.
- (3) We shall pay the purchase price, unless agreed upon otherwise in writing, within 14 days, calculated from delivery receipt of a proper invoice, with a 3 % discount or within 30 days after receipt of invoice net.
- (4) The invoice shall be sent in duplicate to our postal address imprinted. It shall not be attached to a delivery.

- (5) We are entitled to claim statutory setoff and retention rights as well as the objection of a non-fulfilled contract to the extent allowed under the law. We are, in particular, entitled to retain due payments, as long as we are still entitled to claims arising from incomplete and defective deliveries towards the Supplier.
- (6) We reserve the right to choose the method of payment. In case of payment by check or draft, the legitimacy of payment solely depends on whether the check or draft is received by the recipient or bank within the payment term.
- (7) Invoices deviating from the Supplier's delivery or service shall be deemed to be received by us at the time we have received a corrected invoice.
- (8) Payments effected shall not constitute an acknowledgement of the delivery or service as being in accordance with the contract.
- (9) We shall not owe any interest on maturity. In case of default of payment, the statutory provisions shall apply.

#### § 4

#### Delivery Time

- (1) The delivery time specified by us in the order shall be binding. The date of receipt of the delivery at our works shall be authoritative for adherence to the delivery date.
- (2) Early deliveries shall only be accepted after prior written agreement.
- (3) The Supplier shall immediately notify us in writing if circumstances occur or become apparent which indicate that the agreed delivery time cannot be adhered to.
- (4) The Supplier is not entitled to make partial deliveries or to provide surplus or short deliveries without our written approval.



- (5) If the agreed delivery date is not met due to a circumstance for which the Supplier is responsible, we are entitled, at our choice and without prejudice to further statutory claims, to withdraw from the contract after the expiry of a reasonable grace period, to obtain replacement from a third party and/or to demand damages for non-performance. We are entitled to claim compensation for all additional costs occurred due to delayed deliveries or performances for which the Supplier is responsible. The acceptance of delayed delivery or performance does not imply a waiver of any compensation claims.
- (6) Furthermore, if the Supplier fails to comply with the agreed delivery date, we are entitled to demand a contractual penalty of 1 % of the order value for each commenced calendar week, however to a maximum of 5 % of the total order value. Any payable contractual penalty shall not exclude the right to claim further damages under deduction of the contractual penalty. If we accept the goods or service despite a delay, we shall be entitled to demand the contractual penalty without having reserved this right when accepting the goods or the service. The Supplier is entitled to demonstrate that the actual damage incurred was lower or that no damage whatsoever has been incurred.
- (7) Due to operational reasons, we reserve the right to change the volume or quantity or to request the temporary suspension of scheduled deliveries.
- (8) In case a delivery is made earlier than agreed upon, we are entitled to refuse acceptance or to return the goods at the Supplier's cost and expense. If we do not return the goods, we are entitled to store the goods at our works at the cost and risk of the Supplier. With respect to the payment, the agreed delivery date shall be authoritative.

§ 5

**Delivery, Passing of Risk, Passing of Title, Acceptance of Goods, Documentation**

- (1) The transport of goods shall be carried out at the expense and risk of the Supplier "free agreed place of delivery". Where delivery "freight collect" was exceptionally agreed, we shall only bear the most favorable freight costs, unless we have required a certain kind of shipment.
- (2) The deliveries shall be carried out with the carrier designated by us, if exceptionally "freight collect" was agreed.
- (3) Irrespective of the allocation of costs, the risk shall not pass to us before delivery and acceptance of the goods or the service at the agreed place of delivery.
- (4) The ownership of the purchased goods shall pass to us upon transfer of risk. The title to the goods shall be transferred to us unconditionally and regardless of whether the relevant price has been paid. Any retention of title of the Supplier, especially, but not limited to, extended and prolonged retention of title with regard to further processing, are not recognized.
- (5) The Supplier shall enclose a delivery note to the delivery. Furthermore, the Supplier shall indicate our order number, article number, article description, delivery quantity, day of delivery and shipping address on all shipping documents, order confirmations, invoices etc. The delivery note shall be handed over at our incoming goods department. If the Supplier fails to do so, any delays resulting therefrom shall not be attributable to us.
- (6) In case of delays, especially standing and waiting times for which we are not responsible, we are not in default of acceptance.

§ 6

**Transfer of Rights**

The contract concluded with us may not be transferred either wholly or partly to a third party without our written consent. Claims against us may only be assigned with our prior written consent. This shall not apply if the legal transaction on which the claim is based is a commercial transaction for both parties or if the Supplier is a legal entity under public law or an asset under public law.

§ 7

**Transfer of Rights**

The contract concluded with us may not be transferred either wholly or partly to a third party without our written consent. Claims against us may only be assigned with our prior written consent. This shall not apply if the legal transaction on which the claim is based is a commercial transaction for both parties or if the Supplier is a legal entity under public law or an asset under public law.

§ 8

**Spare Parts Supply**

The supplier is obliged to offer our company spare parts at reasonable prices on request (a price increase of 3% p. a. will be accepted by us) and otherwise on the terms of the original order until the expiry of the normal useful life of the delivery, but no longer than 10 years after the date of the delivery note.

§ 9

**Warranty for Defects in Workmanship and Material, Inspection, Quality Assurance  
and Notification of Defects**

- (1) The statutory provisions regarding defects in workmanship and material shall apply, unless set forth otherwise below.
- (2) The Supplier guarantees that the products delivered are free from defects in workmanship and material, have the contractually agreed characteristics and quantities, meet our specifications, and correspond to the legally required standards of quality and safety as applicable at the time of delivery. Amendments hereto have to be approved by us before the delivery of the products.
- (3) Our duty of inspection shall be limited to defects which become apparent upon visual check during our incoming goods inspection including the delivery documents as well as during our quality control using sampling (e. g. transport damage, wrong or short deliveries). We shall immediately give notice of such obvious defects of delivery as well as of any hidden defects to the Supplier as soon as they are identified in the ordinary course of business. In this respect, the Supplier waives the objection of a belated notification.
- (4) With regard to quantities, weights and dimensions, the figures determined by us during its incoming inspection shall be authoritative.
- (5) The Supplier shall undertake quality controls during the production and shall carry out a monitoring of outgoing goods and shall inspect deliveries extensively as to their quality.
- (6) The Supplier shall perform a quality assurance in terms of type and scope and in compliance with the state of the art and agrees to evidence such assurance upon our request. The Supplier shall enter into a corresponding quality control agreement with us if deemed necessary by us. The Supplier shall prepare appropriate control and test reports which refer to the order production and shall keep such documents for a period of 10 (ten) years after fulfillment of such order, unless we have stated



otherwise; the Supplier shall submit us such documents upon request. The Supplier grants to us access to its production sites to the extent necessary and after prior consultation for the purpose of quality audits.

- (7) We are entitled to choose the type of subsequent performance. The Supplier is entitled to reject the type of subsequent performance chosen by us under the provisions of § 439 subsection (3) German Civil Code.
- (8) If the Supplier fails to fulfill its duty to remove the defect or to provide replacement delivery immediately, within 7 business days at the latest, or if the Supplier is unable to do so, we are entitled to withdraw from the contract and/or to demand compensation instead of performance as well as to return the goods to the Supplier at its own risk and to purchase the required goods from a third party. The necessary costs incurred thereby shall be borne by the Supplier.
- (9) In urgent cases, if the immediate removal of a defect is justified by reason of a particular need on our part or if there is reason to suspect that the removal of a defect by the Supplier would cause delays which would make it more difficult for us to meet our obligations towards our contractual partners, or that a removal of the defect by the Supplier would cause higher costs than a removal of the defect by us, we have the right to remove the defect of the defective delivery or service ourselves or have this done by a third party to the extent necessary without informing the Supplier in advance at the expense of the Supplier (self-repair). In such events, we shall also have the right to procure goods or services which are free from defects from a third party (replacement purchase). The Supplier shall bear the necessary costs for the self-repair or the replacement purchase.
- (10) We have the right to return nonconforming goods at the expense and risk of the Supplier.
- (11) If a defect of the goods delivered by the Supplier is only discovered on further processing or further delivery, the Supplier shall bear all costs associated with the exchange or rectification of the defective goods, in particular costs for testing, transport, travel, labor and material.

- (12) In the event of insolvency or bankruptcy, we are entitled to withhold an appropriate security, at least however 10 % of the agreed price, until the expiry of the limitation of warranty claims.
- (13) The Supplier assigns its warranty claims against its pre-suppliers to us. We are entitled to disclose this assignment in the event of bankruptcy of the Supplier. Furthermore, we are entitled to cancel orders which have not yet been delivered at this time.
- (14) The Supplier indemnifies us and holds us harmless against all claims of third parties based on a defect in the Supplier's performance of its obligations. The Supplier shall bear all costs associated with a defect, including potential costs of a recall.
- (15) To the extent that the delivered goods are processed to an end product which is sold to a consumer, we shall have a right of recourse against the Supplier pursuant to Section 478, 479 German Civil Code in case of a claim by customers.
- (16) The limitation period is 36 months, calculated from the passing of risk, unless the statutory mandatory provisions of §§ 478, 479, 634a German Civil Code apply. In case of replacement deliveries, the warranty period for defects in workmanship and material starts again.

## § 10

### **Liability, Product Liability, Indemnification and Obligation of Liability Insurance**

- (1) The Supplier shall be liable to us pursuant to the statutory provisions.
- (2) If a third party raises claims against us based on the Product Liability Act or other provisions due to a product defect, the Supplier shall indemnify us upon first demand against all claims for damages, including damages due to a necessary recall, if and to the extent such damages are caused by a defect of the good delivered by the Supplier. If and to the extent such a damage is caused by the Supplier, the Supplier shall bear the burden of proof. In such cases, the Supplier shall also bear all

expenses and costs including any costs for a legal defense. We and the Supplier shall inform and support each other with respect to any legal defense.

- (3) In order to comply with its obligations of the supply agreement concluded with us, the Supplier shall effect a public liability insurance and a product liability insurance at its own cost including the risks of recall at a sufficient level, at least with a total coverage of 5 Million € per personal/property damage claim, and to maintain the insurance continuously and at least for the duration of 3 years after delivery. Upon request, the Supplier shall provide written evidence of conclusion and continued existence of such insurance. Any further claims for damages remain unaffected hereby.

## § 11

### Confidentiality and Data Protection

- (1) The Supplier shall keep confidential all information received by us under a purchase order, including, but not limited to product specifications and all documents created by the Supplier within the context of an order ("**Confidential Information**") and shall only use them for the purpose of the performance of the order. Without our prior written consent, Confidential Information shall not be copied, used commercially or made accessible to third parties.
- (2) The Supplier shall make accessible Confidential Information, also in its own enterprise, only to persons who need to be deployed for the execution of the order and who also have been bound by the Supplier to the confidentiality obligation. The Supplier shall impose equivalent confidentiality obligations on this group of persons, if this is not already the case. Furthermore, the Supplier shall take all reasonable steps in order to prevent that third parties have access to work results or to Confidential Information received from us. The Supplier shall be liable for any infringement of the confidentiality obligations by a third party to whom Confidential Information was made accessible by it.

- (3) The obligations set out in § 9 subsection (1) and (2) shall not apply to Confidential Information that is demonstrably generally known, becomes generally known through no fault of the Supplier, has been rightfully obtained by a third party or was already known to the Supplier.
- (4) Any advertisement concerning the business relation with us and any other statements towards the public or towards authorities shall only be permitted with our prior written consent, unless these statements are necessary due to mandatory statutory law.
- (5) This confidentiality obligation shall also apply after the end of the delivery agreement or business relationship for a term of 5 years subject to the provisions of the following sentence 2. If the information subject to confidentiality represents a trade or business secret, the confidentiality obligation shall be valid for an unlimited period of time. This confidentiality obligation shall apply accordingly to documents as set out in subsection (1) above received during contract negotiations if no contract is concluded, provided that the term of the confidentiality obligation shall start where it is established that contract negotiations have failed.
- (6) Documents received shall be returned to us without request after the end of the supply and business relationship in proper condition.
- (7) The Supplier shall ensure that all persons entrusted with the performance of contract in connection with the supply and business relationship shall comply with the statutory provisions of data protection law.

## § 12

### Place of Performance, Place of Jurisdiction, Applicable Law

- (1) The place of performance for deliveries and performances shall be Sonnenbühl, Germany.
- (2) The Supplier shall not, without our prior written consent, be entitled to perform his contractual obligations with third parties (e. g. sub-contractors).
- (3) If the Supplier is a businessman, a legal entity under public law or an asset under public law, the place of performance shall be the exclusive place of jurisdiction; however, we shall also be entitled to sue the Supplier at its general place of jurisdiction.
- (4) All legal relations between the parties shall be governed by German law excluding the rules of United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

## § 13

### Final Provisions

Should one or another provision of these General Purchase Conditions be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

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