

# Terms of Purchase

As at: January 2016

## 1. Scope of application

These terms of purchase ("Terms of Purchase") apply to contracts between the respective contractor ("Contractor") and Sprick GmbH ("Customer"). This shall be the case irrespective of whether the contracts relate to the supply of goods, provision of services, creation of works or mixed forms of these.

## 2. Placing of order

- 2.1 The Contractor's orders are valid in writing only and based solely on these Terms of Purchase.
- 2.2 The Terms of Purchase shall apply even if the Customer accepts the Contractor's delivery without reservation in the knowledge of contrary terms or terms deviating from the Terms of Purchase.
- 2.3 The Contractor's contrary terms or General Terms of Business deviating from these Terms of Purchase will not be accepted by the Customer unless the Customer expressly accepts such terms in writing in a particular case.

## 3. Acceptance of order

- 3.1 The Customer's orders must be confirmed in writing within two weeks from receipt by the Contractor unless otherwise stipulated in an individual contract.
- 3.2 All correspondence from the Contractor must be addressed to the Customer's member of staff named on the order, quoting the Customer's order number, if any.

## 4. Prices

- 4.1 The prices indicated in the order are binding. They include all goods, services and additional services necessary for the completion of the contractual performance unless it has been agreed that these are to be paid for separately. This includes in particular the costs of ancillary equipment, transport, customs, packaging and other charges. The Customer can claim supplier's general price reductions occurring up to the scheduled delivery date.
- 4.2 Estimates are binding and free of charge unless expressly agreed otherwise.
- 4.3 If the order contains no price indication or if agreement on the price fails to be reached for other reasons, an appropriate price shall be deemed agreed. When determining the appropriateness of the price the prime criterion shall be the usual market price at the date of the order.

## 5. Delivery, packaging, performance

- 5.1 The delivery date indicated in the order is binding. Compliance with the delivery date shall be determined on the basis of complete order performance. The Contractor shall notify the Customer in writing without delay of any discernible delays to delivery and fulfilment, stating the reasons and the expected duration of the delay. In the event of delivery earlier than stipulated the Customer reserves the right not to take delivery or to store the goods at the Contractor's expense and risk.
- 5.2 Only the quantities ordered shall be delivered. Any additional quantities may be returned by the Customer without prior notice at the Contractor's risk and expense, with a corresponding reduction in the invoice.
- 5.3 Insofar as economically and technically possible the Contractor is obliged to use environmentally friendly products and processes for its deliveries and services. The Contractor shall comply in relation to its goods and services with the respective applicable statutory provisions of the European Union and the Federal Republic of Germany, e.g. the Reach Regulation (EC) No. 1907/2006 and the Electrical and Electronic Equipment Act. If the goods to be delivered are hazardous substances within the meaning of the German Chemicals Act, the statutory safety data sheets in accordance with Directive 91/155/EEC or Reach Regulation (EC) No. 1907/2006 shall normally accompany the delivery to the Customer. Immediately after a revision of these data the Contractor shall without being asked send the Customer the amended version. In addition the Contractor shall without delay inform the Customer about relevant changes due to legal provisions to the goods, the ability to supply them, their scope for use or quality and shall discuss and agree appropriate measures with the Customer in a particular case. The same shall apply as soon as and insofar as the Contractor realises or ought to have realised that such changes are happening.
- 5.4 Deliveries shall be properly packed to commercial standards. In the event of special packaging instructions being given, the Customer shall be entitled to refuse to take delivery if those

instructions are not followed. In any event the supplier shall exclusively use environmentally friendly packaging materials. The hazardous materials regulations in force at the time shall be observed.

- 5.5 The Customer can return packaging charged for separately to the Contractor freight prepaid against a refund of 2/3 of the packaging costs charged if the packaging is in reusable condition.
- 5.6 In cases of the supply of machinery, equipment or tooling, all the provisions of the law on works and services relating to acceptance as provided for therein shall apply. The same shall apply if acceptance has been stipulated in an individual contract.
- 5.7 Any prolonged and/or extended retention of title by the Contractor shall be excluded.
- 5.8 The Contractor shall not transfer the execution of the contract wholly or partly to a third party without prior written approval. Even if approval is granted the Contractor remains fully responsible for fulfilment of the contract. Suppliers shall likewise be appointed by the Contractor only with prior written approval.
- 5.9 In the case of deliveries made directly to third parties, copies of the consignment note acknowledged by the consignee shall be sent to the Customer along with the commercial invoice. The goods and the packaging of such consignments shall carry no indications of origin.

## 6. Assignment of personnel

In the performance of the contractual obligation the Contractor shall only use employees in accordance with the statutory provisions who hold a valid work permit for the Federal Republic of Germany or, if the services are not performed in Germany, a valid work permit for the respective country of manufacture or service who are duly registered with the German or foreign social insurance carriers and whose work, including the tax and other levies payable thereon, is properly accounted for. The Contractor shall pay over all taxes and social insurance contributions payable to the appropriate collecting bodies in full and on time. The employees shall be under a valid contract of employment with the Contractor and shall be paid according to the provisions applicable. The employees shall have been instructed by the Contractor to comply strictly with the provisions of industrial safety regulations, general youth employment protection law and the statutory or official requirements applying. Compliance with the above shall be constantly monitored by the Contractor.

## 7. Delay, penalty

- 7.1 Agreed periods, deadlines and dates shall be adhered to. In the event of non-compliance through the Contractor's fault a penalty of 0.5% of the order value per week commenced, up to a maximum of 5% of the order value, shall be payable. Other claims based on default shall not be affected. The penalty shall not be set against statutory compensation claims.
- 7.2 Unreserved acceptance of a late delivery or service shall not imply any waiver of the Customer's compensation claims for late delivery or performance. This shall apply until full payment of the remuneration owed by the Customer for the delivery or service concerned.

## 8. Quality assurance, warranty

- 8.1 The Contractor shall operate in-process quality control and shall carry out outgoing inspection and shall accordingly inspect the article to be delivered in detail to check its quality. The Customer shall examine the goods on receipt only as to their identity and completeness in accordance with the order as well as for any apparent damage, in particular damage in transit. The Customer shall notify such defects within an appropriate time. The Customer reserves the right to carry out further inspections upon receipt. Defects will subsequently be notified by the Customer as soon as they are discovered in the ordinary course of business. The Contractor shall waive the objection of late notification of defects in that respect.
- 8.2 The Contractor shall provide the statutory warranty for defects occurring within 36 months from delivery, unless other mandatory statutory periods apply. Section 434 Subsection 1, para. 2 and 3 of the German Civil Code (BGB) shall apply including in the case of a contract for work and services. The Contractor shall reimburse the Customer for the necessary expenses of defect rectification in accordance with Section 439 Subsection 2 BGB and shall indemnify the Customer in advance both from third party claims for the costs of defect rectification and from third party damages claims based on a defective

performance by the Contractor. The costs of defect rectification shall comprise in particular, but not only, the costs of dismantling the defective goods and the costs of reinstallation and necessary transport to a different place of performance. The Contractor shall indemnify the Customer from third party claims resulting from a defective delivery by the Contractor if it is itself liable towards the Customer.

- 8.3 To avert an acute danger of significant damage the Customer can, at the Contractor's expense and even without sending a demand to the Contractor or setting a time limit, rectify the defect itself, appoint a third party to do so or purchase a replacement if due to the particular urgency it is no longer possible to inform the Contractor about the defect and the imminent damage and give the latter an opportunity to cure.

#### **9. Liability, force majeure**

- 9.1 Liability shall be governed exclusively by the statutory provisions unless otherwise stipulated in a written agreement. Liability shall be unlimited.
- 9.2 Events of force majeure such as strikes, lockouts, disturbances, official measures and other unpredictable extraordinary events for which the contracting parties are not to blame, shall entitle the Customer to defer fulfilment of the acceptance obligation for the duration of the impediment and an appropriate preparation time. If that makes it unacceptable for the Customer to carry out the contract the Customer may cancel the contract in that respect. The Contractor shall not derive any compensation claims from the delay to the acceptance obligation or withdrawal from the contract.

#### **10. Invoicing, payment**

- 10.1 Invoices shall be issued quoting the order number, the Customer's contact, the quantities delivered and prices. All payments shall be retained by the Customer pending presentation of an invoice compliant with the provisions of the Turnover Tax Act.
- 10.2 Save as otherwise agreed, payments will be made according to normal business practice, following due invoicing and receipt of the goods by the Customer, within 14 days less 3% discount or within 30 days net. The foregoing notwithstanding, if the invoice is received before complete performance and complete provision of any other services, the time for payment shall not commence until the day following the complete delivery or provision of services. In the event of unscheduled part deliveries the time for payment for the overall delivery shall commence on the day following the last part delivery. In the event of acceptance of early delivery the due date shall be governed by the agreed delivery date.
- 10.3 In the case of a defective delivery or service the Customer shall be entitled to withhold payment until due performance or rectification of defects. The Customer shall be entitled to withhold payment even if its claims accruing against the Contractor are not based on the same legal relationship or are not yet due.
- 10.4 Payments exceeding the price stipulated as per section 4 are made expressly subject to the condition that they may be claimed back at any time unless otherwise agreed in writing. Neither party may rely on actual practice deviating from this.

#### **11. Data protection, secrecy, advertising**

- 11.1 The Contractor undertakes to treat all commercial or technical details in any form that are not common knowledge that become known to it through the business relationship with the Customer as trade secrets.
- 11.2 The Contractor may refer in its advertising to its business relationship with the Customer only if the Customer has expressly consented in writing.
- 11.3 The Customer is authorised to machine-process and store data relating to the Contractor within the meaning of the Federal Data Protection Act.

#### **12. Proprietary rights**

The Contractor shall indemnify the Customer against third party claims for infringement of proprietary rights and costs thereby incurred by the Customer if it or its vicarious agents culpably caused the infringement of rights. The parties shall inform each other without delay if claims for infringement of proprietary rights are asserted against them.

#### **13. Loans, additional services**

Models, drawings, samples, tools, gauges, software and hardware or other technical equipment, documents and resources provided to the Contractor or made up by the Contractor to the Customer's specifications shall not be disposed of to a third party, pledged, passed on or otherwise used in any way without the Customer's written consent. The Contractor shall have no right of retention in this respect. The same shall apply to any items produced with the help of such production equipment. All said aids and items shall remain the Customer's material and intellectual property and shall be returned without being asked upon termination of the contract. Insofar as production takes place according to Customer's specifications, Customer shall become the owner upon paying for them in full.

#### **14. Assignment, taking over of contract, set-off**

- 14.1 The Contractor shall require prior written consent for assignment of claims and for consideration of the right to collect account receivables due against the Customer.
- 14.2 The Contractor may only set off claims that are undisputed or res judicata.

#### **15. Insolvency**

- 15.1 The Customer may wholly or partly withdraw from the contract or cancel it in the case of continuous obligations if the Contractor ceases to discharge its contractual obligations or if insolvency proceedings or comparable legal proceedings are commenced by it or permissibly by the Customer or another creditor.
- 15.2 The Customer shall also have the right of cancellation or withdrawal in the event that insolvency proceedings or comparable proceedings are commenced in respect of the Contractor's assets or commencement of such proceedings is refused due to insufficiency of assets.
- 15.3 The same shall apply in the event of occurrence or imminent occurrence of a significant deterioration in the Contractor's financial position jeopardizing satisfaction of its liabilities towards the Customer.

#### **16. Place of jurisdiction, choice of law**

- 16.1 The exclusive place of jurisdiction for all disputes arising from this contract shall be Bielefeld unless the Customer notifies the Contractor in writing that it intends to raise an action at its place of general jurisdiction.
- 16.2 The contract shall be governed by the law of the Federal Republic of Germany.