

M E T A L L H A N D E L S G E S E L L S C H A F T

Schoof & Haslacher mbH & Co. KG

General Terms and Conditions of Purchase

All deliveries to Metallhandelsgesellschaft Schoof & Haslacher mbH & Co. KG (in the following referred to as "MHG") by companies in terms of section 14 of the BGB [German Civil Code] (hereinafter referred to as "Supplier") shall be made on the basis of the below General Terms and Conditions of Purchase (hereinafter referred to as "GTCoP"), unless MHG and Supplier agree otherwise in the respective offer (hereinafter referred to as "Individual Supply Agreement"), on the condition that such offer is accepted by the respective other party.

Section 1 General Remarks

- (1) Any general terms and conditions or any general terms and conditions of purchase established by Supplier shall be applicable to MHG only to the extent to which MHG expressly agreed to them in writing. In addition, these GTCoP shall be exclusively applicable in cases where MHG accepts deliveries from Supplier without any reservations and fully aware of any contradictory general terms and conditions or general terms and conditions of purchase of Supplier. These GTCoP shall also be applicable to future orders within the framework of existing business relationships established under consideration of these General Terms and Conditions of Purchase. This shall be valid even in the case where MHG does not expressly invoke their GTCoP prior to or upon the conclusion of an Individual Supply Agreement.
- (2) In addition to the GTCoP, all trade practices and classifications applicable to the metals trade issued by the *Verein Deutscher Metallhändler e.V. (VDM)* [German Association of Metal Traders] in their respective valid version (hereinafter referred to as "Trade Practices") as well as "Customary Conditions for the Supply of Alloyed Iron and Scrap Steel" and the "Customary Conditions for the Supply of Non-Alloy Iron and Scrap Steel", both issued by the *Bundesvereinigung Deutscher Stahlrecycling- und Entsorgungsunternehmen e.V. (BDSV)* [Federal Association of German Steel Recycling and Disposal Companies] in their respective valid version shall be applicable. The latter shall prevail over Trade Practices in the case of contradictions.

Section 2 Orders

- (1) All declarations (order and acceptance) which are based on an Individual Supply Agreement as well as all amendments and supplements to them must be made in writing. Call-offs and amendments to them may be made in writing or in any other form of electronic data transmission.
- (2) In the case where such Individual Supply Agreement is not established upon receipt of the order by Supplier already and to the extent to which the order does not provide otherwise (in particular any shorter period of commitment), MHG shall be bound to any order placed by fax or by electronic data exchange for a period of three working days from the date of placing the order.

Section 3 Supply Conditions, Exclusion of Default in Acceptance in the Case of Force Majeure

- (1) To the extent to which the parties did not agree otherwise, ordered goods shall be delivered on the basis of *Incoterms 2010 DDP* to the delivery address indicated in the order and/or to the recipient who is indicated in the order (hereinafter also referred to as "Agreed Place of Fulfilment").
- (2) Upon MHG's written request, the goods shall be delivered to any place of fulfilment other than the one originally indicated by MHG. In this case, Supplier shall be entitled to remuneration which shall be increased by the additional expenditure.
- (3) All delivery periods and performance deadlines mentioned in the Individual Supply Agreement and/or the order shall be binding, unless these are expressly agreed upon as not being binding. Supplier is aware that MHG, due to their respective fixed delivery deadlines agreed upon with their customers, is dependent on a "just-in-time" delivery by Supplier free of any defects. Compliance with any delivery time or any delivery period shall depend on the receipt of the goods at the delivery address indicated in the order or on the basis of the above section.
- (4) In the case where it becomes apparent that delivery times agreed upon cannot be complied with, Supplier shall be obligated to immediately notify MHG in writing of the reasons and the presumed term of such delay in deliveries.

Section 4 Obligation to Examination

- (5) In the case where delivery times agreed upon are not complied with, Supplier shall be obligated to compensate MHG for any damage resulting from such delay on the basis of applicable statutory provisions. MHG shall have the right to withdraw from the contract if Supplier repeatedly violates any delivery times agreed upon.
- (6) In the case where Supplier is in arrears with any delivery, they shall be obligated to pay a contractual penalty to the amount of 0.1% (the limit shall amount to 5%) of the net order amount for each calendar day which they are in arrears. Such contractual penalty shall not apply in cases where Supplier is not responsible for such delay on the basis of applicable statutory provisions. If the parties agreed upon partial deliveries or if the respective order results from any framework agreement, the net order amount of the respective partial delivery and/or the respective individual delivery shall be taken into account. MHG's right to assert statutory claims due to arrears or delay in performance shall not be affected by such contractual penalty. The payments made on account of the contractual penalty will be credited to the damage actually resulting from the delay.
- (7) In the case where MHG, due to force majeure or due to the behaviour of any vicarious agent commissioned by MHG, is unable to accept the delivered goods at the Agreed Place of Fulfilment or any place of fulfilment changed on the basis of section 2 para. 3, this shall not be considered default in acceptance by MHG and any claims by Supplier for the payment of the remuneration and/or damages shall be excluded in this case, unless such vicarious agent acts in a grossly negligent or wilful manner. Force majeure shall be considered all circumstances which were unforeseeable or unavoidable upon contract conclusion or which could have been avoided only by employing unreasonable means, in particular acts of God, political unrest, strikes and legal lockouts. For the period of disturbances / obstruction, Supplier shall be obligated to ordinarily store the delivery goods at his own expense and risk.
- (8) Circumstances mentioned under the above section ("force majeure") shall also include any authority measures and orders which are contradictory to the acceptance of any delivery of goods.
- (9) Supplier's claim for the payment of remuneration shall be excluded during the period in which the force majeure event occurs.
- (10) In the case where the transport of goods is impossible and to the extent to which the impossibility of transport was not caused by MHG in a culpable manner, Supplier shall be obligated to store the goods at his own expense and risk until the goods are accepted by or on behalf of MHG. MHG shall bear a reasonable amount of all warehousing costs in the case where MHG culpably prevented the goods to be transported; invoice documents must be provided as evidence for the warehousing costs incurred. Additional rights of indemnity or claims for damages shall be excluded, unless the prevention of transport can be attributed to wilful intention or gross negligence by MHG.

- (1) Supplier shall be obligated to give all delivery goods a thorough and reasonable quality check prior to their delivery to MHG and to examine in particular whether the goods have the quality agreed upon and whether these are suitable for normal purposes or for the intended purposes on the basis of the agreement, unless any Individual Supply Agreement provides otherwise. The scope and content of quality checks shall depend on contractual agreements made in each individual case or, in all other cases, according to the intended use and the significance of the delivered goods, the characteristics of Supplier (manufacturer or intermediary) and the reasonableness of such quality checks.
- (2) MHG undertakes to give the goods delivered - regarding the delivery of several delivery goods by examining one sample - a visual inspection for recognisable defects within a period of three working days from the receipt of the delivery goods.

- (3) MHG shall be considered to have notified Supplier of any defects on time if such notification is sent to Supplier within a period of three working days from the detection of such defects. The timely notification of defects to Supplier shall not depend on the time of receipt of such notification of defects by Supplier.

Section 5 Liability for Defects

- (1) All delivered goods must have the characteristics which were guaranteed on the basis of the agreement, and they must be suitable for the contractual or reasonable purposes of use.
- (2) **Supplier is aware that, in the case of acquisition of metals by MHG, such intended use also includes the smelting of metals.** Accordingly, such goods shall only be considered to be free from defects in the case where they do not contain any substances which prevent or impede the smelting of metals or which, in the case of smelting, cannot cause any damage to machines and/or personnel employed for the smelting process due to the characteristics of the goods, their composition or their components.
- (3) The goods shall be in particular considered not to be free from defects in the cases where the goods contain substances and/or cavities which may result in explosions during the ordinary smelting process (such as explosives).
- (4) In addition, the goods are not free from defects if they cause ionising radiation exceeding the normal level of characteristic metal radiation.
- (5) There shall be no restrictions as to the statutory claims for MHG arising from defects. In each case, MHG shall have the right, at their own choice, to request Supplier to remedy any such defects or to deliver new products and/or goods free from defects. The right to damages, in particular the right to damages in lieu of performance, shall expressly remain reserved.
- (6) If MHG granted Supplier a reasonable period of time for subsequent performance which Supplier did not comply with, MHG shall have the right, instead of withdrawal or any reductions, to remedy such defect themselves or to have third parties remedy such defects at Supplier's expense and to request compensation for any expenses required for this, unless such substitute performance is possible only through unreasonable costs.
- (7) In the case where such defect is ionising radiation exceeding the natural level of characteristic radiation of metals, MHG shall, in addition to Supplier, notify all competent authorities of this if and to the extent to which such obligations to make a report exist. Supplier shall be obligated, immediately or within a maximum period of two days after the notification of defects at the latest, to provide for the removal or the proper disposal of the goods, unless the competent authority threatens to take other measures.
- (8) In exceptional cases, in particular in cases mentioned under the above paragraph, MHG shall have the right to remedy any defects or to remove defective goods themselves at the expense of Supplier or to have third parties remedy or remove them even prior to the termination of any period of time granted to Supplier for this purpose if such defect represents a concrete risk for life, limb or health or for any other legal rights protected on the basis of section 823 of the *BGB* and if MHG, due to this risk, cannot be expected to wait until Supplier subsequently performed or took back their goods. If possible, Supplier shall be notified of the respective risk and the pending subsequent performance for the purpose of enabling them to immediately remedy the defect and/or to remove the goods and the risk situation connected to it.
- (9) The period of limitations for liability for defects shall be 36 months.

Section 6 Defects of Title

- (1) Supplier guarantees that in relation to their deliveries no third-party rights are violated which might restrict or even prevent the delivered goods being used.
- (2) In the case where third parties assert any claims against MHG or their customers due to violation of any protective rights in relation to any delivery by Supplier, Supplier shall be obligated, in addition to all claims resulting from the violation of that guarantee, to exempt MHG and their customers

from these claims upon first written demand. Such obligation to exemption for Supplier shall relate to all expenses which MHG necessarily incurs from or in relation to any claims asserted against them by third parties.

- (3) The period of limitations for defects of title shall be 36 months.

Section 7 Prices and Payment, Set-Off, Transfer of Ownership

- (1) To the extent to which the parties did not agree otherwise, all prices shall include the packaging. Upon Supplier's request or upon MHG's request, the packaging shall be returned to Supplier on a freight-forward basis and/or it shall be taken back by them free of charge.
- (2) Without the express approval by MHG in writing, Supplier shall have no right to totally or partially assign to third parties their receivables towards MHG resulting from their orders.
- (3) A set-off against counterclaims of Supplier shall only be possible against their receivables which are beyond controversy or which have been determined on a legally valid basis.
- (4) Upon complete payment prior to delivery, ownership in the goods ordered by MHG shall be transferred to MHG upon the receipt of the money by Supplier or upon their own acquisition of ownership at the latest. The parties agree to this transfer of ownership. The transfer of the goods is substituted by Seller / Supplier initially storing them on behalf of MHG (constructive possession) and subsequently distributing them on the basis of this agreement.
- (5) To the extent to which the parties did not agree otherwise, payments shall be effected on the 20th day of the month following the month of delivery. MHG shall have the right to decide upon the type of payment.

Section 8 Product Liability

- (1) Supplier shall be liable for all product defects on the basis of applicable statutory provisions.
- (2) Within the framework of the above liability, Supplier shall also be obligated to pay compensation for any expenses on the basis of sections 683 and 670 of the *BGB* as well as on the basis of sections 830, 840 and 426 of the *BGB* resulting from or in relation to any recall campaign executed by MHG due to defects on products delivered by Supplier to the extent to which such defects may result in risks for life, limb and health or to risks for substantial tangible assets. To the extent to which this is possible and reasonable, MHG shall immediately inform Supplier about the scope and the content of any recall campaigns to be executed by MHG and grant them the possibility to comment on that.
- (3) Supplier undertakes to purchase, at their own expense, product liability and business third-party insurance with a scope of coverage to the amount of 10 million euros for each personal / material / property damage – as a lump-sum – and to maintain such insurance until the respective termination of the period or limitations regarding defects from deliveries. Possible claims for damages exceeding this amount shall not be affected by this.

Section 9 Other Provisions

- (1) German material substantive law shall be applicable to all contractual and performance relationships between MHG and Supplier as well as to their establishment, execution, termination and interpretation; the German Private International Law shall be excluded. The United Nations Convention on the International Sale of Goods (CISG) shall not be applicable.
- (2) Supplier shall exclusively be responsible for the compliance with all import and export provisions applicable to their services. In the case of international services, Supplier shall bear all applicable customs duties, fees and other charges. Unless and to the extent to which the parties did not agree otherwise, Supplier shall be exclusively responsible for managing all statutory or authority proceedings in relation to international deliveries and services.
- (3) The place of jurisdiction for any legal dispute between the parties with a business person, any entity organised under public law or any special fund under public law shall be Munich. This shall not apply to legal suc-

cessors or insurance companies of Supplier, unless the latter agree to Munich being their exclusive place of jurisdiction.

- (4) Within the framework of the purpose of this agreement and/or the supply agreement, MHG shall have the right to collect, save and process all personal data which they receive and/or to transfer this task to third parties.