



Goldschmidt Thermit Railservice GmbH

General Terms and Conditions of Purchase from Companies

(Status: 1.11.2009)

1. General/Scope

- 1.1 Our General Terms and Conditions of Purchase shall apply exclusively. We do not acknowledge any contrary or differing terms and conditions of the contracting partner (hereinafter referred to as the supplier) unless we expressly consented to the validity of such terms and conditions in writing. Our General Terms and Conditions of Purchase shall apply even if we accept the supplier's delivery without reservation, despite being aware of the supplier's contrary or divergent terms and conditions.
- 1.2 Our General Terms and Conditions of Purchase shall apply exclusively to companies within the meaning of § 14 BGB [German Civil Code].

2. Conclusion of the contract

- 2.1 Only our written orders with signature or with validity mark or electronic mark of origin (including telefax and email) shall be valid. The content of our order shall apply exclusively.
- 2.2 The supplier must confirm our order in writing within 10 working days of receiving the order unless otherwise expressly agreed. We shall be entitled to revoke our order upon expiry of this time limit. Claims by the supplier based on a valid revocation shall be excluded.
- 2.3 If a petition in insolvency is filed against the supplier's assets and the supplier has not yet executed the contract or has not yet executed it completely, we shall in all cases be entitled to rescind the contract or - in the case of continuous obligations - to terminate the contractual relationship with immediate effect.

3. Prices

- 3.1 Agreed prices are fixed prices and include delivery free domicile based on the INCOTERMS as amended, including costs of delivery, packaging, assumption of transport insurance and VAT at the legally valid rate unless otherwise agreed in the delivery clause.
- 3.2 If the supplier reduces its prices in general, the supplier shall be obliged to pass on this reduction to us. Unless otherwise expressly agreed in writing, we shall not pay for any quotations, estimates of cost and other price calculations by the seller.

4. Payments

- 4.1 We shall make payments – provided that the goods/service are/is received and approved – within 60 days of receipt of the invoice unless otherwise agreed.
- 4.2 If we make payment within 14 days of receipt of the invoice, we reserve the right to deduct 3% cash discount from the net amount.
- 4.3 Where a delivery or service is incomplete or defective, we shall be entitled to withhold payment in full or in part until delivery or performance has been duly effected.
- 4.4 The supplier shall only be entitled to rights of retention and set off against our claims if we have acknowledged such claims or they have been established by declaratory judgment unless the counterclaim is based on a violation of material contractual obligations by us. Material contractual obligations are obligations that protect the legal positions of the customer which are material to the contract and which have to be granted to the customer under the contract in terms of subject matter and



purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

4.5 We reserve the right to select the mode of payment. If payment is remitted by bank transfer, our payment obligation shall be deemed to have been discharged in due time when the bank transfer order is presented to our bank.

5. Delivery periods/Default

5.1 Agreed dates and time limits are binding. Delivery dates or delivery time limits shall be deemed met when the goods are received at the specified delivery address.

5.2 The supplier shall be obliged to notify us in writing without delay - with prior verbal notice - if any circumstances arise or if the supplier becomes aware of any circumstances indicating that agreed time limits for delivery cannot be met. This shall also apply if the supplier is not responsible for delays in delivery. We shall be entitled to compensation from the supplier for the damage resulting therefrom if this obligation is violated.

5.3 We shall only accept partial deliveries or partial services if expressly agreed in writing. If partial delivery has been agreed, the quantity remaining after delivery shall be specified. Invoices for partial deliveries or services shall not be admissible in the absence of a different written agreement.

5.4 We shall be entitled to assert our statutory rights in cases of default in delivery. If a reasonable extension of time expires without result, we shall in particular be entitled to claim damages in lieu of performance and to rescind the contract, even if only for the outstanding part. If we claim damages, the supplier shall be entitled to prove that it is not responsible for the breach of duty. We shall not be obliged to set the above-mentioned extension of time if a fixed date has been agreed with the supplier.

5.5 In cases of default in delivery, we shall be entitled to charge a contractual penalty of 0.5% of the net delivery value per day of default, but not more than a total of 5% of the net delivery value. We reserve the right to assert further statutory rights, in particular to claim damages, setting off the contractual penalty. The contractual penalty shall only be deemed not to apply if the supplier can prove that no damage was incurred or that the actual damage was considerably lower. In the latter case, we can request compensation for the damage actually incurred.

6. Acceptance

6.1 Any contractually specified proof of performance and acceptance shall be effected free of charge for us and documented by both parties in writing.

6.2 Fictitious acceptance shall be excluded.

6.3 Formal acceptance within the meaning of 6.1. above shall also be required for the remuneration agreed to become due under contracts for work and materials.

7. Delivery quantities

7.1 The supplier may only supply the delivery quantities. Any excess deliveries can be returned by us at the supplier's expense without prior notice, and we shall reduce the invoice accordingly. In any case, we shall only be obliged to make the corresponding payment on the date agreed for delivery.

7.2 Unless proven otherwise, the quantities, weights, dimensions and delivery quantities established by us during our incoming goods inspection shall prevail.



8. Delivery specifications

- 8.1 A precisely structured delivery note (single copy), stating our order data, must be sent to Goldschmidt Thermit Railservice GmbH, Rotthausen Str. 142, 45309 Essen, on the date of shipment. As order data, the supplier must indicate at least the order number and purchase order number, contact partner and date of the order. Delivery papers stating the same information must be enclosed with the goods. The place of delivery indicated on the front according to the terms of delivery must be complied with and all packages marked as directed.
- 8.2 Where deliveries are made directly to third parties, copies of the consignment note receipted by the consignee must be delivered to us with the invoice. Furthermore, the goods and packaging for these deliveries must not have any marks of origin whatsoever.
- 8.3 The supplier must comply with normal business hours for the receipt of goods (Monday - Friday from 7:00 – 15:00).

9 Packaging

If packaging materials are returned to the supplier, we shall notify the supplier in due time before their dispatch. Packaging materials are included in the purchase price and the supplier must notify us in due time of the respective value of the packaging materials.

10. Invoicing

- 10.1 An invoice (in duplicate) for every delivery or service must be sent under separate cover from the consignment to our Auditing Department, Goldschmidt Thermit Railservice GmbH, Rotthausen Str. 142, 45309 Essen. The wording of invoices must conform with our order codes and indicate our order number. Any invoices that do not include this information or do not comply with statutory provisions, shall be deemed not issued and returned with a statement of objections.
- 10.2 Deliveries to different works may not be invoiced together; single invoices must be issued.

11. Health and safety / Environmental protection / REACH / IMDS

- 11.1 The supplier must perform services, installation work, repairs and other services in relation to machines, systems, facilities in compliance with the laws, directives and legal provisions respectively valid in the territory of the Federal Republic of Germany. The supplier/contractor must in particular comply with the following laws and regulations with respect to occupational health and safety and environmental protection: the Gerätesicherheitsgesetz [Equipment Safety Act] and its applicable statutory instruments - especially CE marking required by statutory instruments, declarations of conformity and operating instructions, regulations for the prevention of accidents, health and safety regulations and generally accepted occupational health and safety regulations, the Chemikaliengesetz [Toxic Substances Control Act] and its applicable statutory instruments - especially the Gefahrstoffverordnung [Dangerous Chemicals Ordinance], the Bundesimmissionsschutzgesetz [Federal Law Concerning the Protection against Harmful Effects on the Environment through Air Pollution, Noise, Vibrations and Similar Factors] and its statutory instruments, the Altfahrzeugverordnung [Old Vehicles Ordinance], laws and valid regulations on water protection, waste disposal and dangerous goods.
- 11.2 The supplier shall be responsible for its deliveries complying with the provisions of Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation). The substances contained in the supplier's products, if required by the provisions of the REACH Regulation, must be pre-registered or registered after transition periods expire unless the substance is excluded from registration. The supplier shall provide material safety data sheets in compliance with the provisions of the REACH Regulation or the information required under Art. 32 of



the REACH Regulation. On request, the supplier shall also submit to us the information required by Art. 33 of the REACH Regulation.

11.3 Where series production parts are supplied, the supplier undertakes to enter the required data in the International Material Data System (IMDS).

12. Defects/Notice of defects

12.1 Statutory rights with respect to breach of duty shall apply to claims against the supplier unless otherwise stipulated herein or in addition hereto. In any case, we shall be entitled at our option to request the supplier to remedy defects or supply a new product. We expressly reserve the right to damages, especially damages in lieu of performance.

12.2 The supplier is obliged to conduct quality control during the production process and to perform an outgoing goods inspection and must accordingly carry out a comprehensive quality check on the parts to be supplied.

12.3 The supplier shall be notified of any defects in a delivery as soon as they are established in the proper course of business. The supplier waives any objection in this respect regarding failure to give notice of defects in due time.

12.4 The supplier shall provide a statutory warranty for defects that occur within 36 months of delivery of the goods unless a different warranty period is agreed in individual contracts. This shall not affect any further liability.

12.5 Materials that are processed by us shall be accepted with binding force only if they comply with terms and conditions after they are processed.

12.6 Defective goods due to defects in workmanship, material, construction and other defects shall at our request and option be replaced immediately, free of charge and freight paid, or the defect in the goods must be remedied. Where goods deviate from agreements in the contract e.g. with respect to dimension, strength and durability, the values determined by us shall apply in case of dispute or, if the supplier expressly requires, the values determined by a neutral expert appointed by mutual agreement at the supplier's expense.

12.7 The supplier shall indemnify us against any claims by third parties if the supplier itself is held liable in relation to third parties.

12.8 We shall be entitled - without this setting aside the supplier's obligation - to have any defects remedied ourselves at the supplier's expense if there is a risk in delay, or a particular need for urgency, or the defect is minor and the cost of its remedy does not exceed 5 % of the net delivery price of the defective goods, or the immediate threat of damage in relation to the delivery price is particularly high.

12.9 This shall not affect any claims by us for damages or reimbursement of futile expenses. All costs required for supplementary performance, replacement or repair (personnel/cost of materials/transport/necessary recall etc.) shall be borne by the supplier.

12.10 If we incur costs due to a breach of duty by the supplier based on the delivery of defective goods, especially costs for transport, travel, labour and/or material, or costs for a necessary incoming goods inspection exceeding the normal scope, such costs shall be reimbursed to us by the supplier.



13. Product liability/Indemnity/Liability insurance cover

- 13.1 If the supplier as well as ourselves is responsible for product damage in relation to a third party, the supplier shall be obliged - unless otherwise agreed in writing - to indemnify us in this respect at first request against any damage claims by third parties, if the cause was within its sphere of control and organisation. The supplier's liability for damages shall also include, apart from payment of compensation for damage to third parties, the costs of appropriate legal defence, recall costs, testing costs, replacement costs and reasonable administrative costs and other expenses incurred by us for processing the claim settlement.
- 13.2 Within the scope of the supplier's liability for claims within the meaning of 12.1, the supplier is also obliged to reimburse any expenses according to §§ 683, 670 BGB and §§ 830, 840, 426 BGB incurred as a result of or in connection with a recall action conducted by us. This shall apply in particular to any recall action within the framework of the Produktsicherheitsgesetz [Equipment and Product Safety Act]. We shall notify the supplier of the content and scope of the recall measures to be conducted - as far as possible and reasonable - and give the supplier the opportunity to comment. This shall not affect any other statutory rights.
- 13.3 The supplier must maintain liability insurance cover on terms and conditions customary in the trade - minimum coverage of EUR 4 million per occurrence of damage - for the term of the contractual relationship including warranty and limitation period. The supplier must provide us on request with proof; any lower coverage must be agreed with us in individual cases.

14. Force majeure

Cases of force majeure such as strikes, lock-outs, riots, action of public authorities and other events for which we are not responsible, and unforeseen, inevitable and serious events shall entitle us to postpone our obligation of acceptance for the duration of the impediment and for a reasonable preparation time. If a party cannot be expected to perform the contract, this party can rescind the contract. The supplier cannot derive any claims for damages from postponement of our obligation of acceptance or our rescission of the contract.

15. Manufacturing equipment

The supplier shall not sell, pledge or otherwise pass on to third parties or otherwise use on behalf of third parties any models, drawings, samples, dies, tools, gauges, and/or other technical aids and documents provided to the supplier or manufactured by the supplier according to our specifications without our written consent. This shall also apply to items produced by using this manufacturing equipment. They may only be delivered to us unless we have agreed to any other use in writing. Drawings and models shall remain our material and intellectual property, and the supplier must return them after completion without being asked to do so. The supplier shall be liable for any contravention.

16. Confidentiality/Protection of know-how

- 16.1 All business or technical information and data of any kind which we have made available, including characteristics contained in items, documents or data provided and other know-how or expertise - hereinafter collectively referred to as "information" - shall be treated confidentially by the supplier in relations with third parties - for as long as and to the extent that the information is not proven to be in the public domain - and may only be made available to those persons in the supplier's own company who have to use such information for the purpose of effecting delivery to us and who have likewise given a written undertaking to maintain confidentiality. The information shall remain our exclusive property.
- 16.2 Without our prior written consent, such information may not be duplicated or used for commercial purposes other than for deliveries or services for us.



16.3 We reserve all rights to such information and data (including copyrights and the right to use industrial property rights, such as patents, industrial designs, protection of proprietary rights, etc.). If these were made available to us by third parties, this reservation of rights shall also apply in favour of such third parties.

16.4 Products produced according to documents prepared by us, or according to our confidential specifications, shall not be used by the supplier itself, nor offered or delivered to third parties, unless the information which we have provided has lawfully entered the public domain or is state of the art.

17. Third-party industrial property rights

17.1 The supplier shall be responsible for ensuring that third-party rights are not violated in connection with the supplier's delivery or performance.

17.2 If an action is brought against us by a third party for violation of industrial property rights, the supplier shall be obliged to indemnify us against such claims at first written request. We shall not be entitled to enter into any agreements with the third party - in particular to conclude a settlement - without the supplier's consent.

17.3 The supplier's duty to indemnify shall apply to all expenses which we necessarily incur through or in connection with the claims asserted by a third party, especially the costs of legal defence and administrative costs, as well as all costs incurred in obtaining the necessary replacement.

17.4 If the sale of delivery items or work to us and/or their use by us is prohibited, the supplier shall at our option either obtain the right of use for us and at its expense, or shall modify the delivery items or work performed at its expense and in consultation with us in such a way that the violated property right is not affected.

17.5 The limitation period for claims pursuant to 16.1 - 16.4 above is 10 years as of conclusion of the contract.

18. Liability

18.1 We exclude our liability for breach of duty in the case of minor negligence unless this relates to obligations that are material to the contract, to damage resulting from injury to life, limb or health or to warranties or claims under the Produkthaftungsgesetz [Product Liability Act] or other claims where statutory obligatory liability applies. This shall also apply to breach of duty by our vicarious agents and legal representatives.

Material contractual obligations are obligations that protect the legal positions of the supplier which are material to the contract and which have to be granted to the supplier under the contract in terms of subject matter and purpose; material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the supplier regularly relies on and may rely on compliance with such obligations.

18.2 In the event of our liability, we shall be liable only for typical and foreseeable damage. Liability for indirect damages shall be excluded unless we have violated a material contractual obligation or we, our managers or vicarious agents are reproached for intentional or grossly negligent breach of duty.

18.3 Claims by the supplier for damage from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are culpable of malice or gross negligence.

18.4 There is no connection between the reversal of the burden of proof and the foregoing stipulations.



19. Retention of title

19.1 As the goods we order generally merge into our products through processing or working, causing any retention of title to lapse, all deliveries made to us must be free of such reservations and third-party rights (such as liens, other creditor positions from the assignment of claims or transfer by way of security or other securities for loans, sale of accounts receivable, lease purchase, hire purchase etc.). Therefore, we expressly exclude any right of retention of the seller.

19.2 We shall certainly not accept any enlarged and/or extended retention of title.

20. Place of performance/Legal venue

20.1 Place of performance for both parties with respect to any rights and obligations arising hereunder is Essen.

20.2 Sole legal venue for any disputes is Essen unless we notify the supplier in writing that we intend to bring an action at its legal venue.

21. Choice of law

The Law of the Federal Republic of Germany shall exclusively apply. The provisions of the UN Sales Convention (United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods) is excluded.

Note:

According to the provisions of the Bundesdatenschutzgesetz [Federal Data Protection Act], we draw attention to the fact that we operate EDP systems, and that we also in this respect store data received as a result of the business relationship with the customer.