

Sinnex – Steinheimer Innenausbau GmbH
Terms and Conditions of Purchase and Contract

(January 2014)

These terms and conditions are part of all concluded with our suppliers and contractors (Hereinafter referred to as „the supplier“). Deviating agreements, contradicting the supplier's business conditions in particular as well as supplementary agreements, require our express written consent in order to become an integral part of the contract.

1. Offer and Conclusion of Contract

- 1.1 The offers submitted by the supplier have to be binding and free. In this offers he has to adhere to our inquiries regarding quantities, quality, finish etc. and must give written notification of variations.
- 1.2 Orders and other statements are only binding on us if made by us in writing
- 1.3 By way of derogation from § 126 section 3, § 127 section 1 of the Civil Code the electronic form is not equal to the written form

2. Prices

- 2.1 All prices have to be understood as fixed lump-sum prices excluding VAT, including packaging, corrosion protection and transport. They include the remuneration of all deliveries and performances assigned to the supplier.

3. Dates and Deadlines

- 3.1 Delivery and completion dates have to be strictly observed. The period begins with the conclusion of contract, unless otherwise agreed.
- 3.2 The supplier cannot invoke an eventual reservation of self-delivery. The supplier has to bear the risk in the case of problems to purchase the delivery items or the materials necessary for their manufacture, and he is not released of any his obligation to be performed under this agreement.
- 3.3 Does the supplier detect the exceeding of a deadline or time limit, an immediate written notification of the reason and its expected duration has to be given.
- 3.4 In the case of a delayed delivery, we are entitled to statutory claims without limitation (in particular disclaimers of liability limitations).

4. Liquidated Damages

- 4.1 Exceeds the supplier, as a result of delay, the agreed dates and deadlines, he has to pay a penalty in the amount of 0,1% of the net contract amount per working day of the deadline/time-limit extension. The amount of the penalty is limited to a maximum of 5% of the net contract amount, even if several single deadlines/time limits are exceeded.
- 4.2 The reservation of the penalty can be declared up to the final settlement. The payment of the penalty does not release the supplier neither from the fulfillment of his contractual obligations nor from further liabilities for damages – in particular from delays.

5. Packaging, Delivery and other Duties of the Supplier

- 5.1 As part of the scope of delivery and performance, the supplier has to submit all documentation (test records, works certificates, drawings, plans, manuals, etc.) necessary for the acceptance, operation, maintenance and repair within the delivery and performance period, if required in reproducible form and required foreign language.
- 5.2 The supplier has to ensure a suitable customary packaging, complying with the legal regulations, so that the supply items are protected against damages and negative impacts. Furthermore the goods have to be packed that identification and counting check is possible without unwrapping them. Costs and damages caused by incorrect or omitted labeling and improper packing have to be borne by the supplier.
- 5.3 The transport has to include a complete set of drawings with marked item numbers, lading lists with weight and, if necessary, a set of stock-lists.
- 5.4 All changes in comparison to our shop drawings, even if they are just minor, have to be corrected for installation purposes in the provided plans.
- 5.5 We are not obliged to receive and accept any part -, excess – and short deliveries which were not agreed.
- 5.6 For the fulfillment of the concluded contract the supplier is bound to autonomous information regarding the decisive circumstances, in particular existing preconditions or particularities at the construction or installation site. The supplier is obliged to check immediately and according to professional rules whether the envisaged methods of execution, materials put at his disposal as well as the preliminary work executed by us or other companies comply with the usual or individual requirements. As the case may be, he has to report immediately. The aforementioned sentences apply equally for documentation, drawings and plans provided by us
- 5.7 As far as we reviewed the installation dimensions and the general technical specifications on the basis of the received drawings or accepted a sample of the delivery items, this does not discharge the supplier from the contractual accomplishment of his obligations hereunder. Our control is not focused on a sufficient dimensioning and the correct choice of the used materials.
- 5.8 Our and our customer's representatives are entitled to receive information on the contractual performance from the supplier during his working hours, to participate in factory tests or to carry out their own tests. Costs for repeated tests, caused by detected defects, have to be borne by the supplier.

- 5.9 At least during the period of normal operating life of the respective delivery/performance items, the supplier guarantees the supply with spare parts for such delivery/performance items at customary marked terms and prices.
- 5.10 The supplier stands for compliance with legal and regulatory requirements during the performance of the order. The delivery/performance has to comply with the legal regulations for security, occupational safety, prevention of accidents, relevant standards, DIN, VDE and others. Safety devices necessary under these regulations have to be also delivered all the time and are included in the agreed price. Our supplier is bound to keep his workplace always clean. After completion of the work, the workplace has to be delivered in a clean and tidy state to our responsible production engineer.

6 Invoice and Payment

- 6.1 After having provided the contractual deliveries/services, the supplier has to submit his invoices in duplicate with order number, date and exact description of the provided delivery and service. In the invoice the VAT has to be indicated separately at the legal rate applicable at this time.
- 6.2 Payment entitlements of the supplier become due 30 days after the acceptance of the performance of the acceptance of the delivery item at the recipient address given to us, presentation of related documents (e.g. analysis values, weight lists, test or acceptance records, packing lists, etc.) and verifiable invoices (see also clause 6.1) but no earlier than the delivery or completion date provided in the contract.
- 6.3 The payments take place after the payment entitlements become due according to clause 7.2 at our discretion within a period of 30 days net cash or within a period of 15 days, starting when the payment entitlement become due with a 3 % discount.
- 6.4 If services will be charged on time and material basis, the invoices have to be accompanied by proofs acknowledged by us. For the purpose of a speedy handling pro-forma invoices for deliveries/performances, originating in a foreign customs country, need to be received at least 24 hours prior to the handover of the delivery items/the beginning of the acceptance of the performance.
- 6.5 Advance payments will only be made due to a separate written agreement and only against guarantee of a bank admitted as a customs guarantor.
- 6.6 Provision of performance prior to the agreed date or prior to the expiration of agreed deadlines does not touch the due payment date, it furthermore entitles us to reject performances.

7. Transfer, Offset and Retention

- 7.1 Without our written consent the supplier is not entitled to transfer claims and rights directed against us in part or in full to third parties.
- 7.2 The offset of counterclaims directed against us is only acceptable as far as those claims are uncontested, proven and legally determined.
- 7.3 Because of eventual counterclaims from earlier dealings, other dealings or of a current business relation with us, the supplier is not entitled to hold back neither delivery items nor performances.

8. Defects

- 8.1 The supplier shall ensure that the items of performance/delivery are free of material and legal defects and show in particular the agreed quality, meet the latest state-of-the-art knowledge and technology and our specifications, drawings and any other implementing regulations and that the item of performance/delivery has no characteristics that reduce or remove its value or suitability for the ordinary use or the utilization purpose assumed under agreement concluded with us. Furthermore the supplier shall ensure that by the use of the item of performance/delivery no rights of third parties, patents or any other industrial property rights are breached.
- 8.2 If the item of performance/delivery is defective or fail to comply with the contract for any other reason, we are entitled to statutory claims and rights, without any limitation (liability limitation and exclusions in particular), providing that the period of notice as per § 377 of the German Commercial Law is at least eight working days. For hidden defects, in particular those which are only evident at the processing or commissioning of the item of delivery, the period of notice starts only at the moment of our detection.
- 8.3 The limitation period for material defects or defects of title are confirm to legal provisions, providing that all time periods mentioned therein are extended by six months.
- 8.4 In the case of a supplementary performance, also such additional expenditures have to be borne by the supplier, in particular costs for transport, delivery, labour and material, caused by the fact that the item of performance had subsequently been brought to a place other than the place of fulfillment.
- 8.5 If required by the end customer, the supplier agrees already now to transfer to this end customer the existing claims and rights for defects of the contractual relationship between us and him.

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9. Liability, Indemnity, Liability Insurance Protection

- 9.1 Compensation and expenditure claims (hereafter referred to as “compensation claims”) of the supplier against us, irrespective of the legal basis, are excluded, unless we are liable under the product liability act or they are based in an intentional or grossly negligent breach of contractual or legal duties by us, injury of life, body or health of the supplier due to a breach of duty, for which we are responsible, if a guarantee is given for the existence of characteristics or the infringement of essential contractual obligations by us. In the case of an infringement of essential contractual obligations by us, the compensation claims of the supplier against us is limited to the contract-typical and foreseeable damage, provided that there is no intention or gross negligence, no injury of life, body or health, or if you guarantee is given for the existence of characteristics of which we are liable. A breach of duty by us is equal to a breach of duty by our legal representative or subcontractor. No reversal of the burden of proof to the disadvantage of the supplier is associated with the foregoing provision.
- 9.2 Should third parties may make compensation claims because of product defects, the supplier is obliged to indemnify us against such claims, if and in so far as the damages were caused by raw materials, components of the performances provided by the supplier.
The supplier is furthermore obliged to reimburse any expenses in relation with any recall action in our part. We will inform the supplier – as far as possible and reasonable – of the content of extent of the recall to be carried out and give him the opportunity to comment. According to the legal regulations, the supplier's liability remains unaffected.
- 9.3 The supplier has to have product liability insurance with a lump-sum of € 2, 5 Mio per personal/material damage at his own expense.

10. Property Rights

The supplier is responsible that the rights of third parties will not be violated in connection with his delivery/performance. If a third party will help us responsible, the supplier is obliged to indemnify us for any claims on written request. The supplier's indemnification obligation covers all expenses arising and associated with the claim of the third party.

11. Title of the Delivery Item, Reservation of Title, Provision, Tools and Nondisclosure

- 11.1 We shall acquire title to the item of delivery/performance at its handing over, the same applies to documents included.
- 11.2 If we provide any items, we reserve title therein. The processing or reshaping of the provided item will be taken over by the supplier. Will the provided items be processed, reshaped or inseparably combined/mixed with other items, being not our property; we acquire ownership of the new object in proportion to the value of our provided item and to the value of the other objects at the moment of processing/reshaping or combination/mixture. Is the processing/reshaping or combination/mixture carried out in such a way that the other objects have to be considered as principal components, the supplier has to transfer to us a proportional co-ownership in the new product, the supplier undertakes to keep the new goods for us free of charge.
- 11.3 Subject to section 9.1, the supplier is liable for any loss or damage to the provided items as well as for the loss and damage of all provided documents. He has to inform us immediately of a legal or actual impairment of these things and documents.
- 11.4 Tools and machinery made available by us remain our property. The supplier is allowed to use such items only for the sole purpose of the performance of the contract concluded with us. The supplier shall undertake to insure at his own expense the tools and machines at their replacement value against fire, water and theft. Maintenance and inspection work which may become necessary at the tools and machines made available to us, have to be made by the supplier in due time and at his own expense. Eventually occurring malfunctions have to be immediately announced by him in writing.
- 11.5 The supplier shall store our objects separately and mark them as our property at his own expense, maintain them at his own expense and use them according to economic principles. Their use is permitted only within the contract concluded with us. Written proof of the consumption of supplied items has to be submitted by a corresponding list. Waste and chippings have to be returned to us upon request.
- 11.6 Semi-finished and finished products, produced according to our documentation, may be handed over to third parties only with our written consent.

- 11.7 We reserve our ownership, copyright and industrial property rights regarding our images, drawings, calculations, models, samples and any other documents. The supplier is obliged to maintain strict confidentiality on all received images, drawings, calculations, models, samples and any other documents and to use them exclusively for the accomplishment of the contract concluded with us. Copies, reproductions and the like are only permitted with our express consent. The supplier is obliged to return immediately upon request all documents, their copies, reproduction and the like. The supplier has in particular no right of retention of originals, copies, reproductions and the like. Images, drawings, calculations, models, samples and any other documents can be disclosed to third parties only with our express written consent. The supplier's confidentiality agreement remains valid even after the end of the business relationship between us and the supplier. The obligation to maintain confidentiality only becomes invalid, if and when the manufacturing knowledge shown in the transferred images, drawings, calculations, models, samples and other documents has become common knowledge. All internal information made known to the supplier in the course of the cooperation, have to be kept strictly confidential and used only for the purpose of the cooperation with us. The supplier shall also impose absolute secrecy to his employees – even after the time they have left his company – in the frame of legal admissibility. The supplier has to impose this obligation furthermore to all firms, third persons and companies he consults for consultation, performance or support. The supplier shall notify us at once of improvements or proposals regarding the documents, which seem possible in connection with the performance of other orders.
- 11.8 Reference in advertising material to business relations with us may only be made by the supplier with our written approval.

12. Subcontractor

- 12.1 The involvement of subcontractors does not release the supplier from his obligations to us.
- 12.2 When awarding contracts to subcontractors, the supplier must ensure, that in the frame of clause 5.8 such subcontractors also grant us the right of information and testing.

13. Data Protection

We are entitled to store the data of the supplier and individual contracts in our computer system in the frame of the business relation and process and use these data in accordance with the legal regulations for our operation.

14. Place of Performance, Risk Transfer and Acceptance

- 14.1 Place of performance for the supplier is the place of destination specified by us unless otherwise agreed. From there, the risk of accidental destruction or accidental deterioration of the deliveries/performances provided by the supplier to the extent as defined in the following provisions passes to us.
- 14.2 The acceptance of the performance is made by an acceptance confirmation signed by us.
- 14.3 The acceptance of delivery items and the acceptance of performances can be rejected by us if force majeure or other circumstances (also labour dispute) beyond our control make the acceptance of the delivery items or the acceptance of the performance impossible or unreasonable.
- 14.4 If performances show the contractually agreed characteristics only after the completion of subsequent works, they will be accepted by us only after the successful installation, commissioning and eventual necessary test through the competent authorities (e.g. classification societies).
- 14.5 The supplier shall insure the delivery items and performances at his own expense against accidental deterioration (in particular caused by fire or theft) and accidental destruction until the transfer of risk.
- 14.6 Above clause 14.4 applies equally for the acceptance of deliveries regarding the transfer of risk for the accidental deterioration or the accidental destruction of the delivery item.

15. Place of jurisdiction and applicable law

- 15.1 Exclusive area of jurisdiction for all disputes arising directly or indirectly from the contractual relation – also from documents, bills of exchange or cheques – is Steinheim/Murr, Germany. We shall, however, have the option to bring legal actions against the supplier at the courts of jurisdiction for his place registered seat.
- 15.2 The jurisdiction of the Federal Republic of Germany is valid to the exclusion of the United Nation's agreement on the international trade of goods.

16. Invalidity

If individual regulations of a contract concluded with the supplier, of which these terms and conditions of purchase and contract are a part, are or become invalid, the applicability of the remaining clauses of that contract shall remain unaffected.