

Terms and Conditions of Purchase

I. General provisions

1. These Terms and Conditions of Purchase shall govern all present and future contracts between Semperlux AG (hereinafter also: "Selux") and the supplier for as long as Selux does not notify the supplier of new or changed Terms and Conditions of Purchase.
2. We will only recognize our Supplier's differing terms if we have explicitly granted our consent for each individual case. Our Terms and Conditions of Purchase shall apply even if we accept the delivery without any reservation, even if we are aware of contrary or differing conditions of the supplier.
3. If the supplier rejects the applicability of our Terms and Conditions of Purchase, the supplier shall be obligated to reject the order. Otherwise the supplier accepts the applicability of these Terms and Conditions of Purchase.

II. Order and order confirmation

1. Orders shall be placed in writing and shall specify the price and date of delivery (hereinafter also: "delivery deadline"). Furthermore, Selux shall indicate the point of delivery (hereinafter also: "place of delivery"). Oral orders, agreements and supplements shall be confirmed by Selux in writing.
2. Upon receipt of an order, the supplier shall confirm the order in writing without undue delay. The order confirmation must be sent to, and received by, Selux within a period of 2 (two) weeks. If this is not the case, Selux will no longer be bound by the order. If the order does not include the price and/or date of delivery, these details must be stated by the supplier in the confirmation. In this case, the price and/or date of delivery shall only be deemed binding if Selux fails to object within 1 (one) week.
3. In the event that the supplier's confirmation differs from Selux's order on points of substance, such differences shall only be deemed binding if Selux confirms them without undue delay and in writing.
4. Selux shall provide each order with an order number. The supplier must reference this order number in all relevant records, such as confirmations, invoices, delivery notes, shipping documents, packing slips, etc.
5. Specifications concerning the technical equipment and performance of the individual products may be listed in annexes to be sent in written form. These annexes shall be part of the order.

III. Prices and terms of payment

1. Prices quoted in orders shall be net prices. The agreed price shall include free delivery, including packaging, transportation and transportation insurance, which shall be arranged for by the supplier, unless the parties explicitly agreed otherwise.
2. The obligation to return packaging or other transportation materials to the supplier shall require a special agreement.
3. In the event that a price is agreed "excluding packaging", packaging shall be billed separately and at cost price. If packaging material has been used before, the price shall relate to its mere asset value, however, not exceeding its written-down asset value. If packaging material is sent back, the quoted price shall be credited again or refunded at a minimum rate of two-thirds.
4. If the parties agree on a price "ex works" or "ex stock" as an exception, the merchandise shall be forwarded at the lowest possible cost, unless Selux explicitly determines a specific type of transportation or there is a risk that the merchandise might be damaged. Extra costs incurred due to an inappropriate form of transportation shall be borne by the supplier. This shall also apply where dispatches must be expedited in order to meet the agreed delivery deadline.
5. The invoices must conform to legal minimum requirements. They must state the order number and be submitted in duplicate. Statutory VAT shall be reported separately if the supplier is obligated to do so according to the *Umsatzsteuergesetz* (German Value Added Tax Act). The second copy must be marked as a duplicate. An invoice shall only be deemed to be issued by the supplier if the invoice meets these requirements.
6. Payments shall be made within 14 (fourteen) days at a 3 (three) percent trade discount or 30 (thirty) days net. These payment periods shall commence upon full receipt of the merchandise, free from defects, and receipt of the invoice.

IV. Delivery period

1. The supplier shall be obligated to inform Selux in writing without undue delay if circumstances occur that jeopardise shipment of goods on the agreed delivery deadline.
2. If the supplier defaults on delivery or a part thereof, the supplier shall pay a contract penalty for each full week of default at a minimum of 1 (one) percent of the agreed purchase price for the products not delivered on time; a maximum penalty is set at 5 (five) percent of the agreed purchase price.
3. The right to assert additional claims for damages caused by the delay shall be expressly reserved. The amount of the contract penalty shall be credited against the damage claim caused by the delay.
4. The supplier shall not be entitled to perform prior to the agreed delivery deadline.

V. Delivery

1. The merchandise shall be delivered to the delivery point as indicated by Selux; an advice note shall be sent in duplicate. Advice and delivery notes, packing slips, etc., shall be attached to the merchandise.
2. If the necessary shipping documents are missing in any delivery or if the order numbers are not indicated on the shipping documents, the delivery shall not be deemed to be effected in accordance with the contract. Selux shall report this omission without undue delay to the supplier, to the extent that Selux is able to determine the supplier's identity. The delivery shall only be deemed to be effected after the shipping documents have been received or duly completed. Until such date, Selux shall store the delivered merchandise at the supplier's expense.
3. Partial deliveries shall not be permitted. Excess deliveries shall be stored at the supplier's expense and at the supplier's risk or shall be returned.
4. In case of doubt, the actual quantities and weights determined by the incoming goods inspectors shall be decisive. Deviations from the agreed quantities or weights shall be reported by Selux without undue delay.

VI. Transfer of ownership and risks

Ownership rights to the delivered products and the risk of destruction and deterioration shall pass to Selux upon delivery to the point of delivery. This shall not apply if the necessary shipping documents are missing or if the order numbers are not indicated. In this case, the risk and ownership rights shall pass to Selux upon receipt of the shipping documents or when the shipping documents have been duly corrected.

VII. Warranty

1. Selux does not confirm that the merchandise is accepted as being in accordance with the contract solely by the act of accepting the merchandise. This also applies to partial deliveries.
2. As regards the type, quality and quantity of the merchandise and packaging, Selux will normally enter into an agreement with the supplier. Furthermore, statutory provisions shall apply subject to the condition that where specimens and samples are provided, as a minimum, their type and quality shall be deemed to be agreed.
3. Section 377 *Handelsgesetzbuch* (German Commercial Code) shall apply with the proviso that the products delivered do not need to be inspected and any visible defect thereof does not need to be reported without undue delay, but rather within a period of 14 (fourteen) days after the products were duly delivered by the supplier. Hidden defects, on the other hand, must be reported within a period of 14 (fourteen) days after their detection.

4. If there is a quality assurance agreement between the supplier and Selux, the obligations to inspect and to report shall be primarily governed by the provisions of said quality assurance agreement.
5. The parties shall inform each other about the occurrence of recurring errors without undue delay. Recurring errors are errors which occur in an identical manner, in at least 10 (ten) percent of the products and within a delivery period of 3 (three) years. After receiving knowledge of the recurrences, the manufacturer shall take suitable technical measures to remedy the situation without undue delay.
6. The warranty period for material and legal defects shall be 36 (thirty-six) months, unless the law provides for longer periods.

VIII. Intellectual property rights and other third-party rights

1. The supplier shall be obligated to deliver the merchandise in such a manner that ensures that no third-party rights, in particular patent rights, copyrights or other intellectual or industrial property rights, can be asserted with regard to the merchandise if Selux has not explicitly assumed the risk of such assertion.
2. The supplier shall further warrant that third parties will not assert rights, especially intellectual or industrial property rights, with regard to the delivered items without the entitlement to do so.
3. In the event that third parties assert a claim against Selux, specifically for recourse, the supplier shall indemnify and hold Selux free and harmless from all claims upon Selux's initial request, provided that the supplier is at fault. This shall also apply in case of an unjustified assertion of claims, specifically for recourse.
4. The supplier's obligation to indemnify shall also apply to the benefit of buyers and other Selux customers if Selux would otherwise be required to indemnify them.

IX. Product liability

1. The supplier shall be obligated to indemnify and hold Selux free and harmless from any personal injury liabilities and/or claims for damages attributed to the defect of a delivered product if the supplier would also be responsible to the injured party for such defect.
2. In the event that Selux is required to recall products from third parties due to a defect and if the supplier is responsible for the defect, the supplier shall bear all costs associated with the recall.
3. The supplier undertakes to arrange for sufficient insurance coverage. This means, in particular, that the supplier must maintain an adequate product liability insurance policy and an adequate insurance policy against loss of production. The relevant insurance policies shall be presented to Selux upon request.

X. Records, moulds and items produced

1. Any documents provided to the supplier by Selux, such as drawings, models, samples, calculation and production records and moulds, shall remain Selux's property.
2. These records and moulds, including the items produced based thereon, shall not be passed on to third parties or used for purposes other than those contractually agreed upon without Selux's written consent. The documents must be protected from unauthorised access or use.
3. If any of the requirements referred to in paragraph 1 are breached or if the supply arrangement is terminated, Selux may request the return of the relevant documents, records and moulds and the items produced therefrom. Selux may further request their return if the business relationship with the supplier or the manner in which the orders are handled give Selux reason to do so.
4. To the extent that the supplier has sole or joint proprietary rights to records and moulds, including items produced therefrom, the supplier undertakes to transfer its rights against payment of the residual book value or market value, whichever is lower.

XI. Confidentiality

1. The supplier shall treat any and all information and knowledge it acquires regarding the products, production processes and trade secrets as a result of the contractual relationship as confidential. The supplier shall commit its employees, agents, legal representatives and other staff to the same degree of confidentiality.
2. The duty to maintain confidentiality shall not apply to information or knowledge publicly known or becoming known (without any breach of duty on the part of the supplier or its employees, agents, legal representatives or other staff). Nor will there be a duty of confidentiality as regards information and knowledge gained by the supplier on a basis other than that of the contractual relationship with Selux.

XII. Tools

1. The tools provided to the supplier by Selux for the execution of the orders shall remain Selux's property. The supplier shall treat the tools provided by Selux with due care and shall service, insure and maintain them. Any costs incurred for such service, insurance and maintenance shall be borne by the supplier.
2. If the supply arrangement is terminated or if the duties referred to in paragraph 1 are breached, Selux may request the return of the tools. Selux may further request their return if the business relationship with the supplier or the manner in which the supplier handles the orders give Selux reason to do so.
3. The supplier will furthermore be required to return the tools in those cases where mere parts of mould costs were invoiced to Selux.
4. Selux will only be obligated to pay for a tool or a part thereof upon presentation of flawless samples produced from said tool.

XIII. Special rights of withdrawal

1. In the event that the supplier breaches its duties under sections "Records, moulds and items produced", "Confidentiality" or "Tools", Selux will be entitled to withdraw from all contracts not yet executed.
2. If recurring errors occur, Selux may withdraw from all contracts relating to the products affected by the recurring errors if Selux has specified, without result, an additional period of reasonable duration for cure.
3. Withdrawal shall be made in writing.

XIV. Spare parts

The supplier undertakes to provide Selux with spare parts on reasonable conditions and to assist Selux in reparation, if required, even after the supply arrangement has been terminated. This undertaking shall also apply for 5 (five) years from the last delivery.

XV. Assignment and set-off by the supplier

1. The open assignment of trade accounts receivable by the supplier shall be contingent upon Selux's approval.
2. Set-off by the supplier shall only be possible if such claims are uncontested or have been finally and non-appealably established.

XVI. Other provisions

1. Place of performance for all obligations shall be the place of delivery, if specified.
2. Should individual provisions be or become ineffective, the validity of the remaining provisions of these General Terms and Conditions of Purchase shall not be affected thereby. The parties undertake to replace the ineffective provision by an effective one which comes closest to the purpose pursued by the ineffective provision.
3. The relations between the parties shall be exclusively governed by German law, to the exclusion of international private law and the UN Sales Convention.
4. Place of jurisdiction shall be Berlin.