

## 1. Scope of application

1. These General Purchasing Conditions apply to all business dealings between Storz am Mark GmbH (hereinafter referred to as SaM) and the supplier, even if they are not mentioned at the occasion of subsequent contracts. In particular, they apply to contracts on the sale and/or the delivery of moveable objects, no matter if the supplier manufactures the merchandise himself or buys it from his suppliers.
2. Any contrary, additional or other conditions of the supplier deviating from these General Purchasing Conditions do not become part of the contract, unless SaM has consented to their validity in writing. These General Purchasing Conditions also apply if SaM accepts a delivery from the supplier without reservations being aware of his contrary, additional or deviating conditions.
3. In any case, any additional or deviating agreements to/from these General Purchasing Conditions which are concluded between SaM and the supplier for the execution of the contract prevail over these General Purchasing Conditions. For the content of such agreements, a written contract or the written confirmation of SaM is decisive, subject to proof to the contrary.
4. Legally relevant declarations and notifications to be given to SaM after contract conclusion by the supplier (e.g. deadlines, reminders, cancellations) require the written form to be effective.
5. Any mentions of the applicability of legal provisions only have a clarifying significance. Rights that SaM is entitled to according to the legal provisions or other agreements in addition to these General Purchasing Conditions therefore remain unaffected.

## 2. Contract conclusion and modifications

1. An order only becomes binding when it has been placed in writing by SaM or, in case of an oral order, in particular an order placed by telephone or any other telecommunication means, has been duly confirmed in writing by the supplier. An order issued by automatic means without signature and indication of the name is deemed a written order. SaM's silence upon offers, requests or other declarations of the supplier can be considered a consent only if this has been agreed in writing. As far as the order contains obvious errors, clerical or calculation mistakes or is incomplete, the supplier must inform SaM before acceptance for the purpose of correction / completion; otherwise, it is not binding upon SaM.
2. Offers, designs, samples and models of the supplier are free of charge for SaM. Upon request of SaM, the supplier must take them back immediately at his own expense.
3. SaM reserves all title, copyrights and other property rights to all documents provided to the supplier in connection with the order or the contract execution (e.g. product descriptions, illustrations, executive instructions). Such documents may only be used for the contractual performance and not be made available to third parties. After fulfilment of the order, the documents must be immediately returned to SaM unsolicited.
4. The supplier must inform SaM in writing before contract conclusion if the ordered products are subject to export controls or any other limitations of marketability according to the provisions applicable in the Federal Republic of Germany. Otherwise, SaM is entitled, after fruitless expiry of a reasonable delay set by SaM and irrespective of any culpability of the supplier, to withdraw from the contract. Any further claims of SaM remain unaffected.
5. The supplier must immediately, at the latest within 10 calendar days from reception of the order, issue a written order confirmation in which the price and the delivery time are explicitly indicated. A late acceptance is deemed a new order and needs to be accepted by SaM.
6. As far as SaM has concluded a master contract with the supplier for future deliveries, an order placed by SaM is binding, unless the supplier objects to it within five working days from reception.
7. Order confirmations, dispatch notes, consignment notes, delivery notes, invoices and other writings must contain the order data, in particular the order number, order date and supplier number.
8. If it appears during the execution of a contract that deviations from the initially agreed specification are necessary or useful, the supplier must immediately inform SaM in writing and make proposals for changes. SaM will then inform the supplier if and which changes he must make to the original order. SaM is entitled to change the order any time. In such cases, a reasonable delay must be granted to the supplier for the required modifications of production. If the costs incurred by the supplier in the execution of the contract change as a result of such changes, then SaM and the supplier are entitled to claim a corresponding adaptation of the agreed prices.
9. If the supplier applies for the opening of insolvency or comparable proceedings over his own assets or if the justified application of a third party for the opening of insolvency or comparable proceedings over the assets of the supplier is rejected for lack of assets, SaM is entitled to wholly or partially withdraw from the contract.

## 3. Packaging, dispatch, delivery and acquisition of title

1. The supplier must respect SaM's guidelines for the shipping of the products, in particular the respectively applicable transport, packaging and delivery requirements. The delivery must be made in a packaging corresponding to the type of products. In particular, the products must be packaged in such a way that transport damage is avoided. Packaging material may only be used to the extent necessary. Only environment-friendly and recyclable packaging material may be used. The use of returnable packaging is only admissible with SaM's prior written approval. The supplier must mark the packaging with the scope of the delivery, the article and material numbers (including the batch numbers for deliveries to SaM's product portfolio), the quantity delivered, the date of manufacture as well as the order data, in particular the order number, order date and supplier number.
2. As far as the assumption of the transport costs by SaM has been agreed, this only applies to costs at the amount of the least expensive method of shipment, even if a quicker shipment is necessary to keep the agreed delivery times and deadlines. The dispatch of the products must be notified immediately. A delivery note with the scope of delivery, the article and material numbers, the quantity delivered, the date of manufacture as well as the order data, in particular the order number, order date and supplier number, must be enclosed with all deliveries as a single copy.
3. If a VAT-free delivery comes into question, the supplier must provide the required proof as far as the elements of proof are attributable to his area of responsibility. For deliveries within the European Union, the supplier must indicate his VAT ID number, prove his entrepreneur quality and cooperate for the accounting and documented export proofs in writing without being prompted.
4. Deliveries may only be made on working days during normal business hours from Monday to Thursday from 8:00 am to 5:00 pm and on Fridays from 8:00 am to 2:00 pm. The supplier releases SaM from all claims asserted by third parties due to deliveries outside these hours, unless the supplier is not responsible for the delivery outside the normal business hours.
5. For the delivery of the products, the supplier must respect the Ordinance of Hazardous Substances (GefStoffV), in particular package and mark the concerned products correspondingly and explicitly mention any hazardous substances on the delivery note.

6. When the products are handed over, they directly become part of the property of SaM without encumbrance. The supplier warrants that he is authorized for resale and transfer of title. If in a particular case, SaM accepts an offer of the supplier for transfer conditioned upon the payment of the purchase price, the reservation of title is cancelled at the latest at the payment of the purchase price for the delivered merchandise. SaM remains entitled to the resale of the products in the ordinary course of business, even before the payment of the purchase price, subject to advance assignment of the receivable thus created. In any case, all other forms or reservation of title are thus excluded, in particular the forwarded and the extended reservation of title.

## 4. Delivery time

1. The delivery times and deadlines indicated in the order or otherwise agreed are binding. If they have not been indicated or agreed, the delivery period is 6 weeks. The delivery periods start running from the date of the order. Within the delivery period or until the agreed delivery deadline, the products must have arrived at the delivery address provided by SaM.
2. As far as the supplier can realize that the delivery time cannot be met, he must notify SaM immediately in writing indicating the reasons and the expected duration of the delay.
3. If the supplier does not complete his performance within the agreed delivery time or if he enters into default, the rights are determined – in particular with respect to compensation and withdrawal – according to the legal provisions. The regulations in number 4. remain unaffected.
4. In case of default of the supplier, SaM is entitled to claim a penalty of 1% of the net order value per completed calendar week, but only up to a maximum of 5 % of the net order value of the products delivered behind schedule. SaM is entitled to claim the penalty besides performance and as a minimum amount of compensation for damages owed by the supplier according to the legal provisions; any further claims of SaM remain unaffected. SaM's claim for delivery is only excluded when the supplier provides a compensation instead of the delivery upon SaM's request. The acceptance of the delayed delivery does not constitute a waiver of claims for damages or of the penalty. In case of acceptance of the delayed delivery, SaM must claim the penalty at the latest with the final payment.
5. A delivery before the agreed delivery deadline is only admissible with the prior written consent of SaM. SaM is entitled to store or send back products delivered early at the expense of the supplier.

## 5. Prices and payment

1. The price indicated in the order is binding and to be understood „franco domicile“. In the absence of any deviating written agreement, the price in particular includes the costs of packaging, shipping equipment and transport to the delivery address indicated by SaM as well as customs duties and other public levies. If the place of destination is not indicated and nothing else has been agreed, the delivery must be made to the place of business of SaM. The respective place of destination is also the place of performance for the delivery and any potential supplementary performance. The legal sales tax is included in the price, unless it is explicitly designated as net price.
2. SaM is entitled to determine the type of packaging, the means of transport, the transport route and the transport insurance. The supplier is obliged to contract a transport insurance. The costs for the transport insurance are assumed by the supplier, as far as nothing else has been agreed. SaM is a SVS prohibition customer. The invoicing of SVS fees is objected to.
3. Payment is made after acceptance of the product and reception of a correct invoice within 14 calendar days with deduction of a cash discount of 3 %, within 21 calendar days with a deduction of a cash discount of 2 % or within 30 days net. The payment is made subject to verification of the invoice. SaM is also entitled to make the payment, at its own discretion, by check or bank transfer. To the extent legally admissible, SaM is entitled to setoff and retention rights as well as the right to claim non-performance of the contract. In particular, SaM is entitled, in case of defective delivery, to withhold the payment insofar until correct performance without the loss of rebates, cash discounts or similar discounts. Insofar, the payment term starts after the complete correction of the defects. In case of an early delivery of the products, the payment term starts, at the earliest, at the expiry of the delivery period or at the agreed delivery date. As far as the supplier must provide material tests, test protocols, quality documents or other documents, the acceptance of the products only starts the payment term if the owed documents are transmitted to SaM at the latest at acceptance.
4. SaM does not owe any interest on maturity. The legal provisions apply to default of payment.

## 6. Risk transfer, default of acceptance

1. The supplier bears the risk of an accidental loss or the accidental deterioration of the products until their transfer at the place of performance. As far as a formal acceptance has been agreed, it is decisive for the risk transfer. In case of a formal acceptance, the legal provisions on contracts for work and services (Werkvertragsrecht) also apply *mutatis mutandis* to all other aspects. Our default of acceptance shall be equivalent to delivery or formal acceptance.
2. The legal provisions apply to SaM's entry into default of acceptance. However, the supplier must explicitly offer his service to us also if a determined or determinable calendar time has been agreed for an act or cooperation of SaM. If SaM enters into default of acceptance, the supplier can claim a reimbursement of his additional expenses according to the legal provisions. If the contract concerns a non-fungible item to be manufactured by the supplier (custom-built product), the supplier is only entitled to further rights if SaM has committed itself to cooperation and is responsible for the lack of cooperation.
3. If the supplier is obliged to assemble the products in SaM's facility, then the risk is not transferred to SaM until the installation or assembly of the products. This also applies if SaM has assumed certain services like e.g. the transport costs.

## 7. Warranty, claims for defects and guarantees

1. As for SaM's rights in case of material defects and defects of title of the products (including wrong and short delivery and improper assembly, defective assembly or operating instructions) and in case of other breaches of duty of the supplier, the legal provisions apply, unless otherwise provided for hereinafter.
2. The supplier warrants that the delivered products comply with the relevant legal provisions and the prescriptions and guidelines of authorities, professional and trade associations, in particular with respect to accident prevention and employee and environmental protection. The supplier releases SaM from all third party claims asserted against SaM or its clients for the breach of these provisions, unless the supplier is not responsible for the breach of these provisions. SaM must immediately be informed in writing about any reservations of the supplier with regard to the execution of the order desired by SaM.
3. By derogation from § 442 I, 2 BGB (civil law), SaM is entitled to unlimited claims for defects even if SaM has remained unaware of the defect at contract conclusion due to gross negligence.

4. The legal provisions of §§ 377, 381 HGB (commercial law) apply to the commercial obligation of examination and notification of defects with the following provision: SaM's obligation of examination is limited to defects appearing openly at the incoming goods inspection by external visual appraisal, including delivery documents and quality control through a random sample method (e.g. transport damages, wrong deliveries). As far as the products become unsaleable by the examination, the volume to be examined is reduced to a reasonable extent. Apart from that, it depends on the question to what extent an examination is feasible in the ordinary course of business taking into account the circumstances of the individual case. As far as a formal acceptance has been agreed, there is no obligation of examination. SaM's obligation to notify defects subsequently detected remains unaffected. The notification is deemed immediate and timely if SaM informs the supplier about detectable defects within 8 calendar days from delivery and about hidden defects within 8 calendar days from their detection. If any individual samples of a delivery are defective, SaM can, at its discretion, require the supplier to remove the defective pieces or assert claims for defects for the whole delivery. As far as an examination of the products beyond the usual scope of the incoming goods inspection becomes necessary due to defects of the products, the supplier must bear the cost of such examination.

5. As far as SaM has concluded a contract with the supplier, the supplier is obliged to maintain an appropriate quality management system and to manufacture and check the products to be delivered according to this quality management system. If the supplier procures any production or testing material, software, services, material or other supplies from his suppliers for the manufacture or quality assurance of the products to be delivered, he will integrate them by contract into his quality management system or secure the quality of the pre-deliveries himself. In particular, the supplier will conduct his own material tests. The supplier will keep records on the conduct of the measures of quality assurance and store these records and any samples of the products to be delivered in an orderly, clearly arranged manner. He will grant SaM inspections to the extent necessary, explain the records and provide copies of the records as well as any samples.

6. As far as the delivered products are not marketable due to defects or must be duly disposed of by SaM according to the applicable legal provisions, SaM is entitled to execute the disposal at the expense of the supplier.

7. In case of defective products, SaM is entitled to immediately demand, at his own discretion, either the removal of the defects or the delivery of flawless products by the supplier as supplementary performance. The supplier must then bear the expenses required for supplementary performance. This also applies if the products have been brought to a place different from the delivery address indicated by SaM according to their intended use after delivery. The expenses incurred by the supplier for the examination and supplementary performance must be borne by him even if it turns out that there has in fact been no defect. SaM's liability for compensation in case of an unjustified request to remove a defect remains unaffected; however, insofar SaM is only liable, if it has been realized or has not been realized due to gross negligence that there has been no defect. If the supplier does not fulfil his obligation to supplementary performance within a reasonable delay set by SaM, then SaM can take the necessary measures himself or have them taken by a third party at the expense and risk of the supplier. The setting of a delay is expendable if the supplier seriously and definitively refuses such performance, the supplementary performance has failed or if there are special circumstances justifying the immediate assertion of the claim for defects under consideration of the mutual interests. In particular, special circumstances within this meaning are given in urgent cases in which a supplementary performance by the supplier cannot be expected to compensate for SaM's impending disadvantage; SaM will inform the supplier of such circumstances. Apart from that, SaM is entitled, in case of a material defect or a defect of title, to a reduction of the purchase price or to withdraw from the contract according to the legal provisions. Besides, SaM has a right to compensation for damages and expenses according to the legal provisions.

8. The reception of the products and the processing, payment for and reordering of products not yet recognized and reported as deficient do not constitute an approval of the delivery or a waiver of claims for defects by SaM.

9. By derogation from § 438 sec. 1, n° 3 BGB, the limitation period for SaM's claims for defects is 36 months from the risk transfer. As far as a formal acceptance has been agreed, the limitation period starts with the formal acceptance. The limitation period of 36 months also applies correspondingly for claims for defects of title, provided that it remains unaffected for third party claims in rem for the restitution of property according to § 438 sec. 1 n° 1 BGB; claims for defects of title do not expire in any case beyond that as long as the third party can still assert the right against SaM. The limitation periods of the law on sales including the abovementioned extension apply to all contractual claims for defects. As far as SaM is also entitled to extra-contractual compensation due to a defect, the regular legal limitation according to §§ 195, 199 BGB applies, unless the application of the limitation periods of the law on sales lead to a longer limitation period.

10. Suppliers of products requiring spare parts are obliged to supply the necessary spare parts, accessories and tools at the past prices plus a compensation for inflation to SaM after the expiry of the limitation period for an additional period of ten years.

11. Further guarantees of the supplier remain unaffected.

## **8. Product liability**

1. The supplier is obliged to release SaM from third party claims from domestic and foreign product liability, unless he is not responsible for the product defect and the caused damage according to the legal principles of product liability. Further claims of SaM remain unaffected.

2. Within this release obligation, in particular, the supplier must also reimburse such costs to SaM resulting from or in connection with a measure of warning, exchange or recall taken by SaM. SaM will inform the supplier about the content and scope of the measures to be taken, as far as possible and reasonable, and give him an opportunity to take position. The supplier must do his best to support SaM in the measures to be taken and take all reasonable measures imposed by SaM.

3. The supplier is obliged to take out and maintain a product liability insurance with an insured sum appropriate for the products of at least € 3 million per personal injury for each individual and at least € 5 million per property damage. The supplier already now assigns the claims from the liability insurance with all ancillary rights to SaM. SaM already now accepts such assignment. As far as an assignment is not admissible according to the insurance contract, the supplier herewith instructs the insurance to make any potential payments only to SaM. Further claims of SaM remain unaffected by that. Upon request, the supplier must prove the conclusion and the existence of the liability insurance to SaM. The supplier shall refrain from all acts and omissions that could jeopardize the insurance coverage.

4. If the supplier does not duly fulfil his obligation according to section 3, SaM is entitled, but not obliged, to take out a product liability insurance at the expense of the supplier.

## **9. Third-party property rights**

1. The supplier warrants that the delivery and use of the products does not infringe any patents, licenses or other property rights or copyrights of third parties in countries of the European Union or other countries in which he manufactures the products or allows to manufacture. This does not apply as far as the products have been developed by SaM.

2. As far as SaM or its clients are made liable by a third party due to the delivery and use of the products for the infringement of such rights, the supplier is obliged to release SaM from these claims. The release obligation refers to all expenses incurred by SaM in relation to the asserted claims. In particular, SaM is entitled to obtain the approval for the use of the products from the third party at the expense of the supplier. The release obligation does not apply if the supplier is not responsible for the infringement of the third party property rights.

## **10. Secrecy**

1. The parties are obliged to keep all information designated as confidential or recognizable as business or trade secrets according to other circumstances they get access to secret without time limit and not to record, forward or exploit them, unless necessary for the business relationship.

2. The parties will make sure, by suitable contractual arrangements with the employees and agents working for them, that they will also refrain from any own exploitation, transmission or unauthorized recording of such business and trade secrets for an unlimited period of time.

## **11. Ethics in Business**

1. With the acceptance of an order, the supplier confirms that he does not violate any applicable laws and provisions of the countries in which he is active in the framework of the cooperation with SaM.

a) The supplier must consider that this confirmation applies to the entire production process, including all preliminary stages and input products and also his sub-suppliers.

2. Within the applicable laws and provisions of the countries in which he is active and the existing relations between employers and employees and employment practices, the supplier undertakes:

a) to contribute to the effective abolition of child labour and not to tolerate any child labour (ILO Convention C138 and in particular C182),

b) not to accept any forms of forced or compulsory labour (ILO Convention C029 and in particular C105),

c) to refrain from any discrimination against his employees with respect to employment or profession on grounds like race, colour of the skin, sex, religion, political views, origin, health, age or social origin (ILO Convention C111),

d) to respect and to protect the life and health of his employees by making sure that the workplaces and working conditions are correspondingly conceived and minimum wages are respected which correspond to the criteria of the minimum wages from article II of the ILO Document R135.

3. Within the legal provisions and administrative practices of the countries in which he is active and in consideration of the relevant international conventions, the supplier undertakes to respect the principles, objectives and standards of necessity of protection of the environment, of public health and safety and to exercise his business activity in such a manner that it makes a contribution to the general objective of sustainable development.

4. The supplier is not allowed to make or promise any payments to one of our employees or to provide any other financial or material benefits to him to induce him to commit or omit any acts within his official tasks which may lead to the acquisition or retention of commercial orders or convey any significant advantage to the payer in the execution of a deal.

## **12. Final provisions**

1. The supplier may transfer any rights or obligations to third parties or have any order executed by third parties only with the prior written approval of SaM.

2. Counterclaims of the supplier only entitle him to a setoff if they are legally confirmed or undisputed. The supplier may only assert a retention right if his counterclaim is based on the same contractual relationship.

3. Sub-suppliers of the supplier are considered agents. Upon request, they must be immediately notified to SaM.

4. The law of the Federal Republic of Germany applies to the legal relations between the supplier and SaM, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

5. The exclusive – also international – place of jurisdiction for all disputes from the business relationship between SaM and the supplier is the place of business of SaM. SaM is also entitled to file an action at the headquarters of the supplier and at any other admissible place of jurisdiction. Prevailing legal provisions, in particular for the exclusive competence, remain unaffected.

6. The place of performance for all services of the supplier and of SaM is the place of business of SaM.

7. The contract language is German. In case of deviation due to translations of these Conditions or parts hereof, the German version alone prevails as legally binding.