

**General Purchase Terms and Conditions**  
of  
**Nikolaus Sorg GmbH & Co. KG,**  
**Sorg Feuerungsbau und Service GmbH and**  
**EME Maschinenfabrik Clasen GmbH**  
(as of October 2002)

**1. Sphere of application**

- 1.1 Our General Purchase Terms and Conditions (GPTC) apply exclusively; any general terms and conditions of the Supplier to the contrary or deviating from our purchase terms and conditions shall not be recognised by us unless we had given these our previous and expressed approval.
- 1.2 Our purchase terms and conditions shall also apply if we, in the knowledge of the terms and conditions of the Supply contrary to and deviating from ours, accept the delivery of products and services of the supplier (hereinafter: object of agreement) or pay for these.
- 1.3 Our Purchase Terms and Conditions also apply for all future deliveries and services of the supplier to us up to applicability of our new Purchase Terms and Conditions.

**2. Conclusion of the agreement and amendments to the agreement**

- 2.1 Orders, conclusions and delivery schedules, and your amendments and supplements require written form. Verbal orders are only binding if they are acknowledged immediately in writing. Orders and delivery schedules can also take place by means of data telecommunication or facsimile.
- 2.2 Verbal agreements before or on conclusion of the agreement require the written acknowledgement of our purchase department to be effective. No 2.1, sentence 2 remains ineffective.
- 2.3 Verbal agreements after conclusion of the agreement, in particular subsequent amendments and supplements to our purchase terms and conditions – including this written form clause – and ancillary arrangements of any type also require the written acknowledgement of our purchase department to be effective.
- 2.4 If the supplier does not accept the order within five working days of receipt in writing, we shall be entitled to revoke it. Delivery schedules shall become binding if the Supplier does not reject them within five working days of receipt. Section 362 HGB is not affected by this.
- 2.5 Quotations and offers of the Supplier shall be submitted in writing and cost-free for us.
- 2.6 The Supplier is obliged to adhere to our specification. In the case of purchase according to sample, the specification is determined by the sample. In the case of machines, appliances, vehicles and other technical equipment, the statutory DIN and accident prevention regulations concerned shall be adhered to and this shall be verified – inasmuch as customary – by means of test certificates. 2.7 The supplier is obliged to check the documents sent to him meticulously. The Supplier shall draw our attention to recognisable errors in the documents in writing.
- 2.8 The Supplier is obliged to carry out an initial check according to DIN 9001 – 9004. The test requirements shall be co-ordinated with us.

**3. Pricing and transfer of risk– payment conditions**

- 3.1 The information in our orders and delivery schedules shall apply. The invoice shall be directed to the address printed on it as one copy stating the invoice number and other assignment features; it may not be enclosed with the shipment.
- 3.2 If no other special agreement has been made, the prices are free works, duty-paid (DDP according to Incoterms 2000) including packaging. Turnover tax is not included.
- 3.3 The Supplier shall bear the material risk up to acceptance of the goods by us or our authorised representatives at the place at which the goods shall be delivered according to order.
- 3.4 The invoice shall be due for payment after contractual provision of the service by the Supplier and receipt of the invoice. The point of time of receipt shall be determined by our in-box stamp. Payment shall take place deducting a discount of 3 % within 14 days or within 30 day net.
- 3.5 The Supplier is bound to his quotation prices.
- 3.6 Any increase in price shall be announced 6 weeks in advance.
- 3.7 Already placed orders shall be delivered at the old price. Increases in prices shall entitle us to withdrawal from the agreement.
- 3.8 Invoices can only be processed by the party ordering if they state – in accordance with the requirements in the order – the order number shown there. The Supplier shall be responsible for all consequences of this obligation not being adhered to.

**4. Delivery – delivery conditions**

- 4.1 Agreed dates and periods are binding.
- 4.2 Decisive for adherence to the delivery date of the delivery period is the receipt of the goods at the place of receipt agreed in the agreement. If the delivery has not been agreed "free works" (DDP according to Incoterms 2000), the Supplier shall provide the goods in good time taking into consideration the time for loading and shipping to be co-ordinated with the haulage company.
- 4.3 Each delivery shall include the necessary delivery papers (statement of origin, order number, piece list, item number, statistical goods number, VAT number). Goods packaged in cartons, folded boxes, sacks or despatch containers shall be packed in foil suitable for pallets on pool pallets.
- 4.4 The packaging and transport costs are included in the price. If anything else has been agreed, the packaging and freight costs shall be shown separately on the invoice..
- 4.5 Inasmuch as we bear the freight costs, we shall be an SLVS Waiver Customer for all despatches.

- 4.6 If the Supplier has taken over the setting up or the assembly, and if nothing else has been agreed, the Supplier shall, with the reservation of deviating provisions, bear all necessary ancillary costs such as, for example, travelling expenses, provision of tools and clear-downs.
- 4.7 If the dates which have been agreed are not adhered to, the statutory regulations shall apply. If the Supplier anticipates difficulties with respect to the production, pre-material supply, adherence to the delivery date or similar circumstances which could hinder him in delivery in good time or in delivery at the agreed quality, the Supplier shall notify our purchase department in writing and without delay.
- 4.8 Acceptance of the delayed delivery or service without reserve does not mean any waiver of the claim for damages due to us on account of delayed delivery or service; this also applies for part or full payment of the remuneration owed by us for the delivery or service concerned.
- 4.9 The place of performance is the place to which the goods are to be delivered according to the agreement.
- 4.10 With the reservation of any other verification, the figures which we have determined in checking the incoming goods are decisive for piece figures, weights and dimensions.
- 4.11 Alongside the right to use in the statutorily permitted scope (sections 69 a et seq. UrhG), we have the right to the use of software which belongs to the scope of product delivery including its documentation along with the agreed performance features and in the scope necessary for use of the product according to the agreement. We may create a backup copy even without expressed agreement.
- 4.12 Premature deliveries and part deliveries require our expressed approval.
- 4.13 If the delivery does not take place in good time, it is the responsibility of the Supplier to verify that he is not at fault.
- 4.14 If the Supplier is in default, we can, alongside the demand for subsequent delivery, withdraw from the agreement after setting a reasonable period. There is no need to set a period if the delivery is no longer of interest to us as a result of default or otherwise in the statutorily envisaged cases.
- 4.15 Furthermore, we can in the case of default on the part of the Supplier, demand damages instead of the delivery after a reasonable period. There is no need to set a period if the delivery is no longer of interest to us as a result of default or otherwise in the statutorily envisaged cases.
- 4.16 Damages instead of performance comprise in each case also the costs for purchase of goods in replacement.
- 4.17 Our right to replacement of financial loss always remains unaffected.
- 4.18 In the case of default which cannot be put down to the Supplier, we can withdraw from the agreement after the lapse of a reasonable period of grace. We can withdraw without setting a period of grace if the service is without interest for us as a result of default. A period of grace is not required in cases covered by statutory law.

**5. Assembly**

- 5.1 If the assembly of the scope of delivery or a part of the delivery is envisaged in the order, exclusively work and labour agreement law shall be applied to this part of the order.
- 5.2 Acceptance of the work performance to be delivered by the Supplier shall take place through our assembly director of the specialist department director concerned at the place of delivery according to a separate agreement.
- 5.3 The party ordering shall not be liable for injury to persons or material damage which arises as a result of non-adherence to the general and particular accident prevention regulations on the part of the Supplier.
- 5.4 The Supplier shall use specially trained staff for assembly.
- 5.5 He may not use temporary employees or third-party companies for assembly without the expressed approval of the party ordering in writing.
- 5.6 The obligation of the Supplier to correct performance of the agreement and for training and monitoring the personnel deployed is not affected by this approval.
- 5.7 The certificate of clearance for deduction of taxes for construction works shall be presented by the provider of the construction works to the party ordering without the necessity for special demand.

**6. Force majeure**

Force majeure, industrial action, operational disturbances for which the Supplier is not at fault, unrest, official measures and other inevitable events entitle us – irrespective of any other rights – to withdraw from the agreement, in full or in part, inasmuch as they are not of unappreciable duration or result in an appreciable reduction of our requirement.

**7. Defects claims, recourse and spare parts supply**

- 7.1 Acceptance shall take place with the reservation of examination for the freedom of defects in particular for correctness, completeness and serviceability. We are entitled to examine the object of the agreement only inasmuch as and as soon as this is feasible according to the correct course of business; in this respect, the Supplier shall waive the objection of delayed complaint.
- 7.2 To carry out our investigation and complaint obligation, we shall have at last 2 weeks at our disposal in each case. The period shall commence from delivery of the object of the agreement according to intended use

- non-recognisable defects 2 weeks after discovery of the defect.
- 7.3 The statutory provision concerning material and legal defects shall be applied inasmuch as nothing else is regulated in the following.
- 7.4 We shall in principle have the right to select the type of subsequent performance. The Supplier has the right to reject the type of subsequent performance selected by us under the prerequisites of section 439 subsection 3 BGB.
- 7.5 If the Supplier does not begin with the elimination of the defect after our demand for elimination of defects, we shall have the right in urgent cases, in particular to ward off acute danger or for the prevention of greater damage, to carry this out at the expense of the Supplier or to have it carried out by third parties.
- 7.6 Material defects claims shall become time-barred within the statutory periods. The statute of limitation for material defects claims shall commence on delivery (transfer of risk), at the place of destination or on acceptance of the object of the agreement by us. If the Supplier has remained maliciously silent about a defect, only the statutory provisions shall apply.
- 7.7 Apart from this, in the case of legal defects, the Supplier shall indemnify us against any claims of third parties. With respect to legal defects, there shall be a statute of limitation of 10 years.
- 7.8 For parts of the delivery repaired within the statute of limitation for our defects claims, the statute of limitation shall commence running again at the point of time at which the Supplier has fulfilled our claims to subsequent performance in full.
- 7.9 If costs arise for us as a result of deficient supply of the object of the agreement, in particular transport, road, work, material or costs for an incoming goods check exceeding the customary scope, the Supplier shall bear the costs for this.
- 7.10 If we take back products manufactured and/or sold by us as a result of the deficiency of the object of the agreement delivered by the Supplier or if the purchase price has been reduced by us for this reason, we reserve the right to recourse towards the Supplier whereby it is not necessary to set a period for our defects rights which may otherwise be necessary.
- 7.11 We are entitled to demand compensation from the Supplier for the expenditure which we have had to bear in the relationship to our customer because he has a claim to compensation for the expenditure necessary for the purpose of subsequent performance. This includes in particular transport, road, labour and material costs.
- 7.12 Irrespective of the provisions under no. 7.6, statute of limitation shall commence in the cases of nos. 7.9 and 7.10, at the earliest 2 months after the point of time at which we have fulfilled the claims directed against us by our customer, at the latest, however, 5 years after delivery by the Supplier.
- 7.13 If, within 6 months of the transfer of risk, a material defect appears, it shall be presumed that the defect was already existent on the transfer of risk unless this presumption is not compatible with the type of the item or the defect.
- 7.14 Payment of the invoice does not mean any waiver of claims for material defects.
- 7.15 Suppliers of machines and plant are obliged also over and beyond the warranty period to supply us with appropriate spare and wearing parts for the item delivered and to provide sufficiently trained technical personnel for repairs and technical advice.
- 7.16 In the case of machines and plant relevant for production and safety, the Supplier shall guarantee a readiness for service with a reaction period of a maximum of 6 hours for the solution of problems which we cannot handle with our own expertise.
- 8. Product liability and recall**
- 8.1 The Supplier shall conclude and maintain an appropriate product liability insurance for the term of the business relations. Verification of such conclusion shall be provided in writing before the order.
- 8.2 For the case that we are subject to claim due to product liability, the Supplier is obliged to indemnify us against such claims as long as and inasmuch as the damage has been caused by a fault in the object of the agreement delivered by the Supplier and inasmuch as the Supplier is liable also in the external relationship.
- 8.3 In cases of liability dependent on fault, this shall only apply, however, if the Supplier is at fault. Inasmuch as the cause for damage lies within the sphere of responsibility of the Supplier, he shall bear the onus for proof. In such cases, the Supplier shall assume all costs and expenditure including the costs for any legal pursuance or callbacks.
- 8.4 Otherwise the statutory provisions shall apply.
- 9. Protective rights**
- 9.1 The Supplier shall be liable for all damage which arises in contractual use of the objects of delivery from the violation of protective rights and protective right registration within the Federal Republic.
- 9.2 The Supplier shall, in particular, indemnify the party ordering and its purchasers against all claims for the use of such protective rights on first written demand.

- 9.3 The indemnification obligation of the Supplier refers to all expenditure which arises for the party ordering from or on utilisation by a third-party.
- 9.4 The contractual partners undertake to provide information about any risks of violation becoming known and any apparent cases of violation without delay and to give themselves the opportunity to counteract any corresponding claims in mutual agreement.

## **10. Execution of works**

- 10.1 Persons who, in the fulfilment of the agreement, carry out works inside our factory premises or within the factor premises of our customers shall observe the provisions of the operating rules concerned, in particular the safety provisions. The assembly or specialist department director deployed by us on the job shall have sole control of construction or direction of works. The safety instructions issued by him shall be adhered to in particular.
- 10.2 Any liability for accidents which occur for these persons on the factory premises is ruled out inasmuch as these have not been caused by the intentional or gross negligent violation of duty of our statutory representatives or vicarious agents.

## **11. Supply**

- 11.1 Materials, parts, containers and special packaging shall remain our property. These may only be used for their intended purpose.
- 11.2 The processing of materials and the assembly of parts shall take place for us. There is consensus that we are the co-owners of the products, which are kept safely for us by the Supplier, manufactured using our materials and parts in the ratio of the value of the supplies to the value of the complete product.

## **12. Documents and secrecy**

- 12.1 All business or technical information made accessible by us (including features which can be found in any objects, documents or software handed over and other knowledge or experience) as far as and inasmuch as they are not verifiably publicly known, shall be kept secret from third parties and may only be made available within the own company of the Supplier to such persons who necessarily have to be enlisted for the purpose of delivery to us and are also obliged to secrecy; they shall remain our exclusive property.
- 12.2 Such information – apart from for deliveries to us - may not be duplicated or used commercially without our previous written agreement.
- 12.3 All information (if relevant, including copies or records produced) originating from us, as well as objects handed over as a loan shall be returned to us or destroyed on our request.
- 12.4 We reserve all rights to such information (including copyright and the right to registration of commercial protective rights such as patents, utility patents, semi-conductor protection etc.).
- 12.5 Inasmuch as these are made available to us by third parties, this legal reservation shall also apply in favour of these third parties.
- 12.6 Products which are produced according to documents such as drawings, models and similar, or according to our confidential information or with our tools or imitated tools, may neither be used by the Supplier himself nor offered or supplied to third parties. This shall apply correspondingly to our print orders.

## **13. Certificate of origin and export permit**

- 13.1 The Supplier is obliged on request to state the country of origin of the goods and to hand over the certificates of origin necessary for export. He is liable for the correctness of his information.
- 13.2 If we do not receive a necessary export permit, we shall be entitled to withdraw from the agreement.

## **14. General provisions**

- 14.1 The places of jurisdiction for all disputes between us and the Supplier from and in connection with orders and their coming about for which these purchase conditions are the basis are exclusively the courts in Frankfurt am Main. We are entitled further to sue the Supplier according to our choice at the court at his head office or his branch or at the court of the place of performance.
- 14.2 The law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) signed in Vienna shall.
- 14.3 The assignment of demands against us is only permitted with our approval. This shall not apply, however, to advance assignment of the purchase price demand within the framework of an extended reservation of title customary in the sector.
- 14.4 If one provision of these conditions and further agreements made are or become ineffective, the validity of the conditions otherwise shall not be affected. The contract partners are obliged to replace the ineffective provision with a regulation which most closely approaches it for its economic success.

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