

# Terms and Conditions of Purchase of Alexander Binzel Schweisstechnik GmbH & Co. KG

## § 1 General Matters and Written Form

- 1.1 Our Terms and Conditions of Purchase apply exclusively for orders and contracts concluded by us. General terms and conditions of business of our contracting party (hereinafter referred to as the "Supplier") which are contradictory to and/or deviate from our Terms and Conditions of Purchase shall only be valid if they have been expressly recognized on our part by a member of the Management Board or a prokurist (person vested with general commercial power of representation according to the German Commercial Code). General terms and conditions of business of the supplier shall also be non-committal even if we have not expressly rejected them. Tacit recognition of the general terms and conditions of the supplier by means of conclusive conduct shall be excluded.
- 1.2 These Terms and Conditions of Purchase shall apply for all performances of the supplier - including future ones. They shall also include all ancillary performances as well as consultancy and the provision of information. They shall apply regardless of whether special reference is made to them in an individual case.
- 1.3 Arrangements deviating from these Terms and Conditions must be made in writing. This shall not apply for arrangements which are agreed by us with Managing Directors or authorised signatories.

## § 2 Enquiries

- 2.1 We shall be entitled to make enquiries with the supplier about prices and other conditions for deliveries and services at any time. The supplier shall thereupon submit an offer which is exactly in line with our enquiry with regard to all critical features of the delivery of service, especially with regard to the quantity and quality of the goods to be ordered. If the offer includes deviations from our enquiry, the supplier shall be required to expressly draw our attention to this fact. Our enquiries are non-committal and do not constitute an offer within the meaning of §§ 145 ff. of the German Civil Code (BGB).
- 2.2 The submission of an offer by the supplier shall be made free of charge. We shall not be obliged to accept any such offer.

## § 3 Order Acknowledgement

- 3.1 Our orders may only be accepted with a period of 2 weeks with effect from their despatch date.
- 3.2 Acceptance by the supplier must be made by a written order acknowledgement. Receipt by us of the aforesaid acknowledgement shall be decisive for complying with the time limit.

## § 4 Deliveries

- 4.1 All specifications included in our orders for individual or several deliveries shall be binding. This shall particularly apply with regard to the price, delivery period, quality and quantity of the goods to be delivered and the place where delivery is to be made. Any deviations from the aforesaid specifications shall only be permissible with our prior written consent unless consent is given by one of our Managing Directors or authorised signatories.
- 4.2 If a delivery date is not met, we shall be entitled to all the relevant statutory rights. We shall, in particular, be entitled to set a reasonable period of grace for the supplier and to withdraw from the contract in the event of an abortive expiry of the period of grace. Compensation claims and any claims arising from a contractual penalty agreement shall remain unaffected. Acceptance of a delayed delivery shall include no waiver of any compensation claims or claims arising from a contractual penalty agreement.
- 4.3 The supplier shall be obliged to inform us in writing immediately if any facts or circumstances occur or become discernible which may endanger a punctual, complete and/or defect-free delivery. The delivery period may be extended by an agreement with the supplier; the supplier shall have no right to any extension or prolongation.
- 4.4 We shall not be obliged to accept part-deliveries.

## § 5 Declarations by the Supplier

- 5.1 Upon request, the supplier shall be obliged to ensure that each delivery is accompanied by a declaration by the supplier in accordance with the current CE regulation in force. A long-term declaration by the supplier valid for one year shall be sufficient for framework contracts.
- 5.2 Changes relating to the actual bases of the declaration by the supplier shall be notified to us immediately in writing without being requested to do so.
- 5.3 The supplier shall be liable for all damages which are incurred as a result of an improper or delayed submission of a declaration by the supplier. The supplier shall document his/its submissions in the declaration by the supplier in an appropriate manner if necessary.

## § 6 Rights in the Event of Defects

- 6.1 The supplier shall be obliged to deliver the ordered goods in a complete and defect-free manner and the goods shall comply with all quality and durability guarantees issued by the supplier. In the event of an incomplete or defective delivery or non-compliance with an issued guarantee, we shall be entitled to set a reasonable period of grace within which the supplier is to replace defective goods or to rectify the defect or - in case of an incomplete delivery - to deliver the missing items at our discretion and as his/its cost. If the supplier does not perform accordingly within the said period, we shall be entitled to exercise all relevant statutory rights.
- 6.2 The limitation period for claims attributable to quality defects shall be 24 months with effect from the transfer or risk unless a longer limitation period is provided by law.
- 6.3 We shall be obliged to inspect delivered goods for any quality or quantity deviations within a reasonable period; any complaint in the aforesaid respect shall be regarded as timely if, in the case of a defect identifiable within the scope of a customary examination, it is despatched by us to the supplier within a period of three working days as from the arrival of the goods. In the event of hidden defects, the period shall only commence upon identification of the defect.
- 6.4 If the supplier is liable to us for damage compensation on account of a defective delivery, the damage compensation shall also include those damages which we incur as a result of claims lodged by third parties to whom we re-sell the goods delivered to us. In this case, the supplier shall be obliged to indemnify us against such third party claims upon first request. This shall also include the expenses incurred by us in connection with the judicial and extrajudicial defence against third party claims. Other claims to which we are entitled in this connection by law shall remain unaffected; this shall particularly apply to any recourse with the delivery chain in accordance with §§ 478 and 479 of the German Civil Code (BGB).
- 6.5 If the supplier is responsible for a product damage within the meaning of the German Product Liability Act (Produkthaftungsgesetz), he/it shall be obliged to indemnify us against third party claims in this respect upon first request insofar as the cause was under his/its control and organization and insofar as he/it is liable in external relationships. Within the scope of the aforesaid liability, the supplier shall also be obliged to refund any costs or expenses arising from or in connection with any recall campaign executed by us. We shall inform the supplier as soon as possible and reasonable of the contents and scope of the recall measures to be executed and shall give him/it the opportunity of commenting thereon. This shall not prejudice our statutory claims against the supplier.
- 6.6 The supplier shall be obliged to take out a product liability insurance, the cover amounts of which include all foreseeable personal injuries and property damages. The compensation claims to which we are entitled shall not be prejudiced thereby.
- 6.7 The delivery or service, as the case may be, is to be statutory and official directives as well as the safety engineering and industrial medicine state of the art valid as per the delivery date for Alexander Binzel Schweisstechnik GmbH & Co. KG are complied with. This shall in particular apply to EU directives, acts based on EU regulations, the Appliance Safety Act, accident prevention and other industrial protection directives. To the extent prescribed, the CE sign must be attached clearly visible, the declaration of conformity and the manufacturer's declaration as well as a risk analysis are also to be supplied. The directives to be complied with for Alexander Binzel Schweisstechnik GmbH & Co. KG shall also in particular include Directive 1907/2006/EC (REACH Directive) as well as Directive 2011/65/EU (RoHS2).

## § 7 Third Party Rights

- 7.1 The supplier shall be liable for ensuring that no third party rights are infringed in connection with its delivery and the intended use thereof especially no industrial property rights of third parties, such as patent rights, copyrights or similar rights.
- 7.2 If claims are lodged against us on account of an infringement of a third party's rights in connection with the performance of the supplier, the supplier shall be obliged to indemnify us against such claims upon first request. This shall include all costs of an extrajudicial and judicial legal defence. The supplier shall undertake to make all information available to us which is required for our legal defence. Without consulting the supplier, we will not make any commitments, make any settlements or make any other agreements with claimants. The supplier shall not unreasonably refuse to consent to any necessary commitments, settlements or agreements.

## § 8 Invoices and Payment Terms

- 8.1 Invoices shall be sent in duplicate to the address stated on the invoice. The original and duplicate copies are to be expressly marked as such. Invoices may not accompany the relevant delivery but have to be sent separately. Invoices shall be formulated in such a way, that an allocation to the order and an appropriate

verification are possible without difficulty. They have, in particular, to correspond with the order and have to include the order number shown on our order. The supplier shall be responsible for all consequences arising from non-compliance with the obligations under this provision unless he/it is able to prove that he is not responsible for the consequences.

- 8.2 Statutory value-added tax shall be included in the price.
- 8.3 Unless expressly agreed otherwise, we shall settle invoices on the last day of the same month for goods received from the 1st to the 15th of a month and on the 15th of the following month for goods received from the 16th to the end of the month with 3% cash discount or net within a maximum of 45 days after delivery and receipt of the relevant invoice.
- 8.4 The supplier may not exercise any right of set-off unless his/its counterclaim shall be undisputed or conclusively ruled upon. The same shall apply to the exercise of any right of retention.

## § 9 Secrecy and Confidentiality

- 9.1 We retain all proprietary rights and copyrights to the documents, drawings, models or other items, as well as to the Know-how provided by us to the supplier. All documents, drawings, models or other items or Know-how which are assigned to the supplier for submitting an offer of for manufacturing the goods to be delivered shall not be used by the supplier for any other purposes and shall not be made available to third parties unless this is required to perform the obligation of the supplier. The transfer thereof to third parties requires our prior consent in any case. They shall be returned to us immediately and without being specifically requested to do so if they are no longer required for preparing an offer or for carrying out the work which the supplier had undertaken to perform. Know-how provided by us has to be kept secret. The same shall apply if the contract is terminated. The supplier shall treat the aforesaid documents and items and the Know-how as a business secret. He/it shall be liable for all damages which are incurred as a result of a culpable breach of this obligation.
- 9.2 The aforesaid provisions shall also apply for those items, e.g. models and tools, which are produced on the basis of documents or items assigned to the supplier. These will become our property after payment.
- 9.3 The supplier shall also be obliged to treat all information, documents, records and other items and the Know-how as a business secret which are expressly marked by us as "confidential" or in a similar way and which are recognizable in the particular circumstances as having to be treated as business secrets. This shall not apply to circumstances which are already generally known.
- 9.4 The supplier shall impose corresponding obligations on its employees and all third parties used for performing his/its obligations.
- 9.5 The supplier shall not be entitled to refer to our existing business relationship for advertising purposes without our express approval.
- 9.6 The result of work for the first time arising in the case of performance of the deliveries and services by the supplier, which deliveries and services have been contracted by us, shall become our property without the need for a separate transfer thereof. This applies irrespective of whether or not these results can be protected by patents, utility models or similar rights. The supplier shall inform us about such results at an early stage.

## § 10 Materials or Components Provided

- 10.1 If we provide the supplier with materials or components, such materials or components shall remain our property. They shall only be used for performing our order. Any processing or conversions shall be undertaken on our behalf. If materials or components belonging to us are processed with other items not belonging to us, we shall acquire a co-ownership right in the new chattel in the ratio of the materials or components belonging to us (purchase price plus value-added tax) to the other processed items on the date of processing. If the materials or components belonging to us are inseparably intermingled with other items not belonging to us, we shall acquire a co-ownership right in the new item in the ratio of the materials or components belonging to us (purchase price plus value-added tax) to the other intermingled items on the date of intermingling. If the intermingling is carried out in such a way that the items of the supplier are to be regarded as the main item, it is hereby agreed that the supplier shall assign a pro rata co-ownership right to us.
- 10.2 In all cases of processing, conversions and/or intermingling, the supplier shall keep the items subject to our exclusive ownership or co-ownership in safe custody at his/its own cost on our behalf and separately from items belong to the supplier or third parties.
- 10.3 The supplier shall inform us immediately of any enforcement proceedings initiated by third parties on the aforesaid items in order to enable us to defend our rights in accordance with § 771 of the German Code of Civil Procedure (ZPO). If the costs of our legal defence in accordance with § 771 of the German Code of Civil Procedure (ZPO) cannot be recovered from the third parties concerned, the supplier shall be obliged to reimburse the aforesaid costs.

## § 11 Tools

- 11.1 If costs for the acquisition of tools are to be borne exclusively by us in accordance with the relevant order, we shall become owner of the aforesaid tools as soon as the supplier has received the tools. If the supplier has no tool construction facility of its own, the supplier shall notify our Terms and Conditions to its sub-contractors on condition that we receive a copy with a written confirmation of compliance with the aforesaid Terms and Conditions. The supplier shall keep the tools in safe custody on our behalf and shall treat them with care. The tools may only be used for performing the obligations of the supplier to us. In particular, the supplier shall undertake only to transfer tools to a subcontractor with our express written consent if this is necessary for the supplier to perform its obligations.
- 11.2 If we have acquired ownership of the tools, we shall be entitled to exercise our power of disposal at any time with regard to the said tools without giving any reasons.
- 11.3 The supplier shall undertake to take out adequate insurance cover for our tools against fortuitous loss at his/its own cost.
- 11.4 § 9, para. 3 shall apply correspondingly.

## § 12 Despatch Regulations; Transfer of Risks

- 12.1 All deliveries shall, unless otherwise agreed, be made with all costs paid to Gießen Main Station if goods are despatched by rail and with all costs paid to Gießen Main Post Office if goods are despatched by post for self-collection, including packaging. Delivery charges and cartage shall not be assumed by us.
- 12.2 § 447 of the German Civil Code (BGB) shall not apply.
- 12.3 Forwarders and parcel services may only be commissioned for delivery purposes with our express consent.
- 12.4 Upon despatch, the relevant conditions of the German Railways are to be observed and the most economic freight possibilities for us have to be observed.
- 12.5 All details shall always be included in letters, despatch notifications and invoices, etc., in order to enable an allocation of our relevant order to be made without difficulty. If several orders have been placed, each order has to be treated separately in any correspondence.
- 12.6 All details are to be noted on the consignment note and in the express consignment or package address section which enable an allocation to be made to our order without difficulty.
- 12.7 The supplier shall enclose a delivery note (packing list) for each individual shipment of each order. The text of the delivery notes must correspond with the invoice based on these Terms and Conditions of Purchase. Invoices shall not be treated as delivery notes.
- 12.8 The supplier shall be liable for costs and damages which are incurred by us due to the fact that the supplier has culpably failed to comply with despatch specifications. This shall also include costs and damages which are incurred by us due to the fact that consignments can only be assumed by us with delay on account of non-compliance with despatch specifications.

## § 13 Assembly on our Premises

- 13.1 If the performances of the supplier include work on our premises, we shall not be liable for damages which are sustained by the supplier, persons assigned by the supplier to perform his/its obligations or the property of the supplier or third parties used to perform the obligations of the supplier. This does not apply to claims arising from any injury to life, body or health if we are responsible for the aforesaid damages or - in case of other damages - if these are based on a willful or grossly negligent breach of duty by us.
- 13.2 The supplier shall be obliged to comply with current safety regulations when it is working on our premises.

## § 14 Final Provisions

- 14.1 The place of performance for the provision of all work and services in connection with this contract is Buseck/Alten-Buseck.
- 14.2 The exclusive legal venue for all legal disputes is Gießen.
- 14.3 All legal relationships arising in connection with the acceptance, execution or termination of the present contract shall be subject to the substantive law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (UN-Kaufrecht). This shall also apply even if they are founded on a tortious or any other legal basis.