

## **General Terms and Conditions of Purchase of Südmo Components GmbH and Südmo Projects GmbH**

### **§ 1 General - Scope of Application**

1. Our Terms and Conditions of Purchase shall apply exclusively. Contradictory terms and conditions of Supplier or those deviating from ours shall only be acknowledged by us if we have expressly approved of their applicability in writing.

Our Terms and Conditions of Purchase shall apply even if we accept Supplier's delivery without reservations despite knowledge of contradictory terms and conditions of Supplier or those deviating from ours.

2. Our Terms and Conditions of Purchase shall only apply towards businessmen in the sense of § 310 I, German Civil Code.

3. Our Terms and Conditions of Purchase shall also apply to all future transactions with Supplier.

### **§ 2 Quotation**

1. Supplier shall be obliged to accept our order within a period of 1 week. Supplier shall provide us with an order confirmation. On the order confirmation, the order data, in particular article number (ID number), the delivery data and the price shall be stated.

2. Orders shall only be binding if they are made in writing by Purchaser or confirmed.

3. We reserve rights to copyright and ownership to illustrations, drawings, calculations and other documents. They may only be made accessible to third parties with our express written approval. They are exclusively to be used for production on the basis of our order; after handling of the order, they shall be returned to us without specific request. They may not be disclosed to third parties.

### **§ 3 Prices and payment terms**

1. The price stated in the order shall be binding.

2. The statutory Value Added Tax has not been contained in the price.

3. If not agreed to the contrary, we shall pay the purchase price with 3% discount within 14 days or net within 90 days of delivery and receipt of the invoice.

4. Rights to setoff and retention shall accrue to us to the statutory extent.

### **§ 4 Delivery period - arrears in delivery**

1. The delivery period stated in the order shall be binding.

2. Supplier shall notify Purchaser of the dispatch of each individual consignment by a notification of dispatch, stating the order data (§ 2, sub-section 1). The notification of dispatch must be available to Purchaser no later than the day of departure of the goods.

3. In the event of arrears in delivery, we shall be entitled to demand lump-sum damage from arrears of 2% of the order value per completed week, albeit no more than a total of 10%. The right to further-reaching statutory claims is reserved. Supplier shall have the right to prove to us that no or only considerably lower damage has been suffered as a consequence of the arrears. The lump-sum shall then be reduced accordingly.

4. Supplier shall be obliged to notify us without delay if circumstances occur or become recognisable for it from which it can be seen that a stipulated delivery period will not be complied with.

## **§ 5 Passage of risk - documents**

1. Delivery shall be franco domicile to the extent that nothing to the contrary has been agreed.
2. Supplier shall be obliged to state our order data (§ 2, sub-section 1) on all dispatch papers, delivery notes and invoices (in duplicate in each case); if it fails to do so, delays in the processing, for which we shall not answerable, shall be inevitable.

## **§ 6 Examination of defects**

1. We shall be obliged to examine the commodities for deviations in quality or quantity within a reasonable period. The notification shall be deemed on time if it reaches Supplier within 8 working days of receipt.  
If Supplier has been certified pursuant to DIN ISO 9001:2000, the duty to examination and notification of defects pursuant to § 377 German Commercial Code shall not apply.

## **§ 7 Warranty**

1. The statutory claims to warranty shall accrue to us without curtailment. Notwithstanding this, we shall be entitled to demand remedying of defects or replacement delivery from Supplier at our choice. In such a case, Supplier shall bear the expenditure necessary for the purpose of the remedying of defects or replacement delivery. The right to damages, including damages in lieu of performance, shall remain reserved.
2. The period for barring of limitations shall be 36 months starting from passage of risk.
3. We shall be entitled to implement remedying of defects ourselves at Supplier's expense if there is danger in delay or specific urgency.

## **§ 8 Product liability - holding harmless - third-party liability insurance coverage**

1. To the extent that Supplier is responsible for product damage, it shall be obliged to hold us harmless against claims to damages from third parties at first request insofar as the cause can be found in its sphere of control and organisation and it is liable itself in the external relationship.
2. Within the framework for its liability for cases of damage within the meaning of subsection 1, Supplier shall also be obliged to reimburse all and any expenditure pursuant to §§ 683, 670, German Civil Code and also pursuant to §§ 830, 84, 426 German Civil Code resulting from or in connection with a recall action carried out by us. We shall notify Supplier about the contents and the scope of the recall measures to be carried out to the extent possible and reasonable and give it an opportunity of making comments. The right to other statutory claims shall remain reserved.
3. Supplier engages to maintain a product liability insurance with a sum insured of € 10 million per case of physical or property damage; if further-reaching claims to damages accrue to us, they shall remain unaffected.

## **§ 9 Protective rights**

1. Supplier shall vouch for the fact that no third-party rights within the Federal Republic of Germany are breached in connection with its delivery.
2. If claims are made against us by a third party for this reason, Supplier shall be obliged to hold us harmless against such claims at first written request; we shall not be entitled to make any kind of agreement with the third party without approval of Supplier, in particular not concluding a settlement.
3. Supplier's obligation to hold us harmless shall relate to all expenditure incurred by us from or in connection with claims made by a third party.
4. The period for barring by limitation shall be 10 years, starting from conclusion of the contract.

### **§ 10 Retention of title**

1. Insofar as we provide parts to Supplier, we reserve title thereto. Processing or reshaping by Supplier shall be done on our behalf. In the event of processing or blending, we acquire co-ownership to the new object in the ratio of the value of our object to the other processed objects at the time of the processing.

### **§ 11 Guidelines and Standards**

1. Supplier confirms that the machines/appliances/components/parts fulfil all applicable guidelines and standards and are supplied for putting into use according to the Machine Safety Act with a declaration of conformity or a manufacturer's declaration. Supplier shall take the corresponding safety, health and hygiene requirements from corresponding guidelines, standards and other acknowledged technical rules such as the requirements of the employers' liability insurance scheme, VDE directives, DIN standards etc. into due account. Supplier shall provide the declarations in question in the German language and in the language of the country of use as required by us. This obligation shall be an integral part of the contract; if it is not complied with, the order shall be deemed not contractually performed. The right to claim damages on account of the consequences resulting therefrom is reserved. We likewise reserve the right to initiate legal steps through competent authorities. The declaration of conformity shall correspond to the EC declaration of conformity within the meaning of EC Directive (2006/42/EG). All parts not affected by said directives shall remain unconsidered.

### **§ 12 Place of performance - place of jurisdiction**

1. Place of performance for our payments shall be Riesbürg. Insofar as Supplier is a businessman, our place of jurisdiction shall be our registered office. However, we shall be entitled to sue Supplier at its place of residence or registered office as well.

2. The terms and conditions of business as well as the entire legal relationships between ourselves and Supplier shall be governed by the law of the Federal Republic of Germany. Validity of standardised UN purchase law (CISG) shall be ruled out.

Date: April 2010