

## General Conditions of Purchase (updated: November 2018)

### § 1 General; scope

- (1) Our general terms and conditions of purchase apply to all transactions of DSI Underground Austria GmbH including all affiliated companies. Terms and conditions of the supplier that contradict or deviate from our terms and conditions of purchase shall not apply unless we have explicitly agreed to their validity in writing. Our terms and conditions of purchase also apply if we accept the delivery without reservation in the knowledge that the terms and conditions of the supplier contradict and/or deviate from our terms and conditions of purchase.
- (2) All agreements made between us and the supplier for the purpose of executing this contract shall be set forth in writing in this contract. Agreements made verbally or by telephone require our written approval to be valid. Modifications or amendments to the contract must be in writing. This also applies to deviations from this written form requirement.
- (3) Our terms and conditions of purchase shall only apply to merchants within the meaning of the law.
- (4) These terms and conditions of purchase shall also apply exclusively to future contracts between the contracting partners until a newer version is included.

### § 2 Quote; order placement

- (1) The supplier shall accept our purchase order within a period of 2 weeks.
- (2) We reserve the property rights and copyright to illustrations, drawings, calculations and other documents; they may not be made available to third parties without our express written consent and are to be used exclusively for production based on our order; they shall be returned to us without request after completion of the contract. The secrecy obligation shall survive for a period of 10 years after the end of this contract and shall only expire if and to the extent that the manufacturing knowledge contained in the provided illustrations, drawings, calculations and other documents has become public knowledge.
- (3) A quantity and deadline guarantee for deliveries only arises through the scheduling agreements or call orders issued by us.
- (4) A transfer of the order to third parties is not permitted without our consent.
- (5) Product changes or adjustments in the supplier's production, which lead to a change in the specification, the drawings or quality standards or have other effects on the operational safety and function of our products, are only permitted with our prior written consent.

### § 3 Prices; terms of payment

- (1) The prices stated in the order shall be deemed firm. Unless otherwise agreed in writing, they shall include delivery and packaging. The return of packaging material shall be subject to a separate agreement.
- (2) Price changes after conclusion of the contract cannot be considered. This shall also apply if the reason for the price increase is unforeseeable and/or severe for the suppliers.
- (3) All prices are – unless otherwise agreed in writing – understood to be in euro and exclusive of VAT.
- (4) Unless otherwise agreed in writing, we will pay the purchase price within 21 days with 3 % discount or without deduction within 60 days of receipt of invoice; calculated respectively from delivery and receipt of a duly furnished invoice in accordance with para. 6. For the calculation of the discount period, the date of payment for a bank transfer from an account is considered to be the date of receipt of the order at the referring financial institution.
- (5) If the goods supplied are defective, we may withhold payment on a pro rata basis pending proper performance.
- (6) The invoice must be received by us no later than 14 days before the due date, otherwise the deadline will be extended accordingly. In addition to the statutory invoice features, it must in particular contain the number and date of the order, VAT ID number in the case of cross-border trade within the European Union, unloading location, number and date of the delivery note and the quantity of goods invoiced. The invoice must only refer to one delivery note respectively. The supplier shall be responsible for any consequences resulting from non-compliance with this obligation, unless he can prove that he is not responsible for such non-compliance.
- (7) If a price has not been explicitly agreed, any existing framework agreement shall apply. In the absence of a framework agreement, the price of the last delivery of the corresponding product shall apply.
- (8) We are entitled to offset our due claims against claims of the supplier.
- (9) Claims of the supplier to third parties may only be assigned or pledged with our written consent; consent will not be denied without good reason.
- (10) Payments do not constitute a waiver of any rights to correction of faults and do not constitute an acknowledgement of proper fulfilment of the contract.

### § 4 Delivery; performance

- (1) Delivery shall be made at the date specified in the order.
- (2) Unless otherwise agreed, delivery shall be according to Incoterms 2000, CIP.
- (3) Cash on delivery shipping will not be accepted and the acceptance of the delivery chargeable to the supplier will be denied.
- (4) The supplier shall state the date and number of the order on all shipping documents, delivery notes and other correspondence. If he fails to do so, we cannot be held responsible for delays in processing.

### § 5 Default in delivery

- (1) The delivery time stated in the order is binding; adherence hereto is an essential contractual obligation.
- (2) Should the agreed delivery date not be adhered to due to a circumstance for which the supplier is responsible, the supplier shall be obligated to compensate us for the damage caused by the delay. The acceptance of a late delivery or service does not represent a waiver of further claims arising from the delay. Foreseeable delivery delays must be reported to us immediately. The supplier shall compensate us for the damage resulting from a breach of this obligation.
- (3) We are fully or partially exempt from the obligation to accept the ordered delivery if the delivery, due to a delay on the supplier's side caused by force majeure or industrial action – taking economic factors into consideration –, can no longer be used by us or if the delay in delivery is unreasonable.
- (4) If delivery is made earlier than agreed, we reserve the right to return the goods at the expense and risk of the supplier or alternatively to store the goods at the supplier's expense and risk until the agreed delivery date. Storage is charged at a daily flat rate of 0.2% of the total order value. Further claims or rights are reserved. In the event of acceptance of premature deliveries, the due date shall be based on the originally agreed delivery dates.
- (5) In the event of default in delivery – taking into account any further claims for damages – we shall be entitled to charge a contractual penalty of 1.5% per commenced calendar week, subject to a maximum of 6% in total, to the value of the delayed portion of the delivery or service.

### § 6 Receiving inspection/quality assurance/parts subject to documentation

- (1) For quantities, dimensions, weights and quality of a delivery, the values determined by us at the receiving inspection shall be decisive. Acceptance is subject to inspection for correctness and suitability and otherwise according to our quality assurance conditions – if relevant – which are given to the supplier before the conclusion of the contract. Our inspection personnel and the domestic and foreign authorities are entitled to check the quality of the material and/or the manufacturing process of the delivery items and to inspect quality records after prior notification and during working hours at the supplier's factory.

- (2) The supplier is obligated to comply with the state of the art. He is also required to set up and carry out his own appropriate production control to ensure that the products manufactured by him have the agreed and prescribed quality characteristics.

### § 7 Liability for defects

- (1) The supplier shall be liable for material defects and defects of title of the delivery items in accordance with the statutory provisions, unless otherwise specified below.
- (2) We are obligated to inspect the goods for any qualitative or quantitative defects within a reasonable period. Our claim shall be considered timely if received by the supplier within a period of 4 working days, calculated from the time the delivery was received or when the defect(s) were discovered. Insofar as, due to the nature of the delivered items, a more extensive examination (e.g. by experts) is required, the deadline shall be extended accordingly.
- (3) The regulations set out in § 6 shall apply to the inspection of the delivered goods, in addition to the statutory provisions.
- (4) The statutory warranty rights are available to us in full; in any case, we are entitled to demand from the supplier, at our own discretion, the remedy of the defect or the delivery of a defect-free item (exchange). Should the exchange fail, we shall be entitled to withdraw from the contract.
- (5) An exchange shall be deemed to have failed after one unsuccessful attempt.
- (6) We also expressly reserve the right to claim damages in lieu of performance.
- (7) We are entitled to remedy the defect ourselves, or have the defect remedied, at the supplier's expense if there is a risk of delay or special urgency.
- (8) The warranty period shall be 36 months from the time the risk is transferred.
- (9) For delivered parts that have been repaired or replaced, the warranty period begins anew at this time - beyond the legal inhibition.

### § 8 Product liability/indemnity/insurance

- (1) Insofar as the supplier is responsible for a product defect, he is obligated to indemnify us from third-party claims for damages upon first request if the cause lies within the supplier's organizational and responsibility domain and if the supplier himself is liable in respect to third parties.
- (2) Within the scope of his liability for claims within the meaning of para. (1), the supplier is also obligated to reimburse any expenses incurred by us in connection with any recall initiated by us. We will notify the supplier, as far as is possible and reasonable, about the content and extent of the recall action and give the supplier the opportunity to make representations. This does not affect any other statutory claims.
- (3) The supplier undertakes to maintain a product liability insurance with a coverage of € 5 million per personal injury/property damage claim - blanket insurance - and to provide evidence thereof on request; in individual cases, a different amount can be agreed. Should we be entitled to further damage claims, these shall remain unaffected.

### § 9 Industrial property rights

- (1) The supplier shall warrant that his deliveries do not breach any third-party rights.
- (2) If a claim in this regard is asserted against us by a third party, the supplier shall be obligated to indemnify us against these claims upon first written request; we will then no longer be entitled to make legally binding agreements with the third party without the consent of the supplier, in particular to conclude a settlement.
- (3) The supplier's obligation to indemnify us from such claims also extends to any necessary expenses incurred by us as a result of or in connection with the claim asserted by a third party.

### § 10 Retention of title/tools

- (1) Where we provide parts to the supplier, we retain title thereto. Any processing or alterations by the supplier are performed on our behalf. If the goods to which we retain title are processed with goods that do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of our item (purchase price plus VAT) to the other processed items at the time of processing.
- (2) If the item provided by us is inseparably combined with goods that do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of the goods to which we retain title (purchase price plus VAT) to the other combined items at the time of combination. If the combination results in the new goods of the supplier constituting the main part of the new item, then it is agreed that the supplier assigns proportional ownership of the newly created goods to us; the supplier shall safeguard the sole ownership or co-ownership rights for us.
- (3) We reserve title to all provided tools; the supplier is obliged to use the provided tools exclusively for the production of the goods we have ordered. The supplier is obligated to insure our tools against fire, water and theft at reinstatement value at his own expense and to provide us with a corresponding confirmation of insurance at our request. At the same time, suppliers assign to us all proceeds from any claims under this coverage; we hereby accept the assignment. The supplier is obliged to carry out any required maintenance and inspection work on our tools at his own expense and in a timely manner. He must notify us of any malfunctions immediately; if he culpably fails to do so, our claims for damages shall remain unaffected.
- (4) Insofar as the security interests, we are entitled to according to para. 1 and/or para. 2 exceed the purchase price of all unpaid reserved goods by more than 10%, we shall be obligated to relinquish the security interest to that extent at the supplier's request as we see fit.
- (5) We may assume means of production proportionally paid by us at the end of delivery at the present value of the supplier's share. Delivery items that have been developed by us and/or bear our trademark and/or our part number may only be sold to us by the supplier. The supplier further undertakes not to offer such parts in catalogues or other advertising or sales documents.

### § 11 Confidentiality and data protection

- (1) The parties undertake to treat all non-public commercial and/or technical details that become known to them through the business relationship as a trade secret.
- (2) The supplier may not use business relations for purposes of advertising or public relations without our consent. Subcontractors shall be bound to this regulation accordingly.

### § 12 Spare parts

- (1) The supplier is obligated to maintain in stock spare and expendable parts for at least 5 years after the last delivery and to ensure the availability of such spare parts in a sufficient manner.

### § 13 Place of jurisdiction/place of fulfilment/contractual language/arbitration

- (1) If the supplier is a merchant, the place of jurisdiction shall be our registered place of business. However, we also have the right to file suit at the supplier's general place of jurisdiction.
- (2) Unless contradicted by mandatory legal provisions, exclusively Austrian law shall be considered agreed to the exclusion of the principles of the conflict of laws under private international law (e.g. IPRG, Rome I-VO etc.) and the UN Convention on the International Sale of Goods.
- (3) Unless otherwise stated in the order, the place of fulfilment shall be our registered place of business.
- (4) The contractual language shall be exclusively German, unless otherwise expressly agreed in writing.
- (5) Furthermore, we are also entitled to have all disputes arising out of or in connection with this contract settled in an arbitrary proceeding according to the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with these Rules. Such disputes are also exclusively subject to Austrian law with the exception of the valid version of referral norms. The application of the UN Convention on the International Sale of Goods is expressly excluded. The place of arbitrary proceedings is Vienna, Austria. The language of the proceedings shall be German.