

General Procurement Conditions for Purchase and Work Contracts of SELVE GmbH & Co. KG and SELVE Vermögensverwaltung GmbH & Co. KG (SELVE)



[As of December 2022]

§ 1

General – Area of Application

- (1) Our Procurement Conditions apply exclusively; we do not recognise supplier conditions contrary to this or deviating from our General Procurement Conditions unless we expressly agree to them being valid in writing. Our Procurement Conditions apply even in cases in which we accept the delivery from the supplier without reservation and we are aware of supplier conditions contrary to or deviating from our Procurement Conditions.
- (2) All agreements made for the purpose of executing this contract between us and the contractor, hereinafter referred to as the 'supplier' irrespective of the underlying legal relationship, shall be set out in writing at a minimum.
- (3) Our terms and conditions of procurement shall apply only to entrepreneurs within the meaning of § 13 of the German Civil Code.
- (4) The preparation of quotations, technical projects, preliminary studies, etc. is at no cost to us in all cases and in particular does not oblige us to place an order.

§ 2

Inspection and Acceptance of the Order, Effects of Acceptance, Offer Documents

- (1) The supplier is duty bound to accept our order within a period of 2 weeks, preferably by noting acceptance on the invoice copy, otherwise by stating price, discount, cash discount and other order details pursuant to the following § 3(3). When the supplier accepts the order, it confirms that it has informed itself about the type of execution and scope of the service by viewing the existing documentation and any additionally provided documentation.
- (2) We reserve ownership rights and copyrights to illustrations, drawings, calculations, samples, models, brands, presentations and other documents, and they shall not be made accessible to third parties without our express written consent. These shall be used exclusively for production on the basis of our order and shall be returned to us unsolicited after completion of the order. These shall be kept secret from third parties, in this respect the provisions of § 9(4) shall also apply.
- (3) We shall not be liable in the event of obvious and typographical errors and miscalculations in the documents, drawings and plans we submit. The supplier shall inform us of such errors so that our order can be corrected and renewed. This also applies to missing documents or drawings.
- (4) The supplier shall observe the following regulations within the scope of the respective area of application:
 - (a) our specification of services and/or functional specifications, if provided
 - (b) The substance ban under Directive 2002/95/EC (ROHS) and the Electrical and Electronic Device Act
 - (c) The Product Security Act
 - (d) The Construction Products Act
 - (e) The VDE Regulations
 - (f) The TÜV Regulations
 - (g) The DIN RegulationsIf and to the extent that there are any inconsistencies within these documents, the specification of services/functional specification shall always prevail. In the event of doubt, the supplier shall clarify inconsistencies before execution and to remove any doubt.

§ 3

Prices – Invoices –

Payment Conditions – Assignment Ban

- (1) The price stated in the order is binding. Unless otherwise agreed in writing, the price shall include delivery 'free domicile', including packaging.
- (2) Unless there is a deviating agreement at least in text form, statutory value-added tax is not included in the price.
- (3) Invoices shall be sent to us in single copy for each order separately. They shall not be enclosed with the goods consignment. We are able to process invoices only if these contain the order number and order date detailed in our order; the supplier is responsible for all consequences resulting from non-adherence to this obligation provided that it cannot demonstrate that it is not culpable for such. Invoices not taking this into account do not give rise to a payment entitlement; they will be returned for correction.
- (4) Periods for cash discounts are calculated starting on the date on which we receive the invoice, however no earlier than when the goods are received. For invoices for construction services, the cash discount / payment period commences on the date of the inspection by the architect instead of date of invoice receipt.
- (5) We render payments as follows: For deliveries rendered from 1st-15th of a month: on 30th of the same month minus 3% cash discount; for deliveries rendered from 16th to the last day of a month: on the 15th of the following month minus 3% cash discount.
- (6) We hold offsetting and retention rights in the statutory scope.
- (7) Demands held by the supplier towards us may be assigned to third parties with our consent only. This does not apply to assignments as part of commercially commonplace extension forms of title reservation or as part of factoring contracts.

§ 4

Delivery Time

- (1) The delivery time stated in the order is binding. The goods shall be received at the place of receipt specified by us within the delivery period or on the delivery date.
- (2) The supplier shall inform us immediately in writing if circumstances arise or become apparent to it which indicate that the stipulated delivery time cannot be met.
- (3) We shall be entitled to the statutory claims in the event of a delayed delivery. In particular, we shall be entitled to claim damages instead of performance in accordance with statutory provisions.
- (4) In the event of a delayed delivery, without prejudice to our statutory rights (see paragraph (3) above), we shall be entitled after a reminder to demand a contractual penalty of 0.5% of the net order value per week or part thereof, a maximum of 5% of the net order value and/or the delivery and/or to withdraw from the contract due to the delayed performance. Assessed and paid contractual penalties shall be set off against a claim for damages.
- (5) We are not obliged to receive the goods before the delivery date.

§ 5

Transfer of Risk – Documents

- (1) Unless otherwise agreed in writing, delivery shall be effected free domicile. The risk of accidental loss or accidental deterioration shall be borne by the supplier until we have received the goods.
- (2) The supplier shall indicate our exact order number on all consignment notes and delivery notes. We shall not be responsible for delays in processing in the event of its failure to do so.

§ 6

Packaging – Insurance – Goods Acceptance

- (1) **Our shipping instructions and general shipping regulations shall be followed exactly at all times; the supplier is liable for all losses arising from non-observance.**
- (2) If the supplier charges or separately itemised packaging material, this shall be reimbursed when it is returned. Notwithstanding our right of return, the supplier may demand that the packaging is returned only based on a special agreement provided not otherwise governed by the Packaging Ordinance.
- (3) The supplier bears the costs of the transport insurance.
- (4) Goods receipt takes place during our normal business hours only.

§ 7

Statute of Limitation, Inspection Duties, Liability for Defects, and Other Anti-Contractual Performance

- (1) If a works-leaving certificate ('Werksausgangszuzeugnis') is demanded in the order, the supplier shall check that the goods meet their contractual characteristics and record the state of the goods in the certificate before they are delivered. Our incoming goods inspection is limited to checking the identity of the goods, the delivery quantity and the presence of transport damage and obvious defects. Further controls of the delivered goods only take place within the framework of our quality management system as quality controls accompanying production. Due to this handling, the supplier waives the right to complain about insufficient or delayed incoming goods inspection in accordance with § 377 of the German Commercial Code. A complaint shall be deemed to have been made in good time if it is received by the supplier within a period of 10 working days, calculated from the receipt of the goods or, for latent defects, from discovery.
- (2) We shall be fully entitled to statutory remedies in the event of defects and/or other contractually non-compliant performance on the supplier's part.
- (3) In exceptional cases in which there is a risk of delay or special urgency which, after weighing the interests of both parties, does not permit a deadline to be set for subsequent performance, we shall be entitled to carry out the subsequent performance ourselves at the supplier's expense after having informed the supplier in advance.
- (4) Your deliveries may be incorporated into construction products within the meaning of § 438(1) no. 2 of the German Civil Code, which are subject to a 5-year warranty when delivered to German customers. For this reason, the warranty for the product delivered by the supplier or the order it has executed if it is a construction product is the expiry of 63 months after delivery to or approval by us if statute does not envisage a longer limitation period or expiry prevention.

If the delivered goods or services are not incorporated into a construction product, we state this in the order and the statutory limitation periods apply.

§ 8

Product Liability – Indemnity – Liability Insurance Cover

- (1) In accordance with the Product Safety Act (ProdSG), the supplier bears full responsibility for the products it supplies.

If measures become necessary according to the ProdSG or an official body, the supplier shall exempt us from the costs and expenses if and to the extent that the cause is intrinsic in its product or the supplier is culpable for the cause.
- (2) If the supplier is liable for product damage, it shall indemnify us upon first request against claims for damages by third parties to the extent that the cause lies within its sphere of control and organisation and it would be directly liable itself in the external relationship. Our entitlements above and beyond this, particularly those as part of the settlement of joint and several debtors, these remain unaffected by this clause.

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- (3) As part of its liability for damage cases according to (1) and (2), the supplier is also duty bound to reimburse any expenses resulting from a recall campaign or in the context thereof carried out by us or officially ordered. We will inform the supplier if possible and reasonable about the content and scope of the recall measures to be implemented and provide it with an opportunity to make a statement. Other statutory entitlements remain unaffected.
- (4) The supplier undertakes to maintain product liability insurance with appropriate coverage for personal injury / property damage; if we hold more extensive compensation entitlements, these remain unaffected.

§ 9

Trade Mark Rights

- (1) Subject to paragraph (5), the supplier shall be responsible for ensuring that no industrial trade mark rights of third parties within the EEA states are infringed in connection with its delivery or service.
- (2) If claims are made against us or our customers by a third party for this reason, the supplier shall indemnify us against these claims upon our first written request. We shall not be entitled to enter into any agreements with the third party without the supplier's consent, in particular to conclude a settlement.
- (3) The supplier's obligation to indemnify refers to all expenses necessarily incurred by us as a result of or in connection with claims asserted by a third party.
- (4) The limitation period shall be ten years, calculated from the contract's conclusion.
- (5) The above paragraphs (1) to (4) shall not apply insofar as the supplier has manufactured the delivered goods in accordance with drawings, models or other equivalent descriptions or arrangements provided by us and does not know or, in connection with the products it manufactures, cannot know that industrial trade mark rights are infringed thereby.

§ 10

Retention of Title – Provision of Materials – Tools – Confidentiality

- (1) We reserve the right of ownership if we provide materials or semi-finished products to the supplier. These shall be stored separately as such and may be used for our orders only. The supplier shall also be liable, even without fault, for any reduction in value or loss occurring during its possession. Processing or transformation by the supplier shall undertake processing or carried out for us. If our reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new items in the ratio of the value of our goods (purchase price plus VAT) to the other processed goods at the time of processing.
- (2) If the item we provided is inseparably commingled with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other commingled items at the time of commingling. If the commingling is carried out in such a way that the supplier's item is to be regarded as the main item, co-ownership shall pass to us proportionally at the time of the combination or commingling and the supplier shall hold the sole ownership or co-ownership on loan for us.
- (3) Tools and production equipment we provide to the supplier remain our property. The supplier is duty bound to use such tools and production equipment exclusively to manufacture the goods we have ordered. The supplier shall insure these tools and production equipment at replacement value against fire, water and theft at its own expense. At the same time, the supplier hereby assigns to us all claims for compensation under this insurance and we hereby accept the assignment. The supplier shall carry out any necessary maintenance and inspection work as well as all maintenance and repair work on tools which are wholly or partly our property at its own expense and in good time. It shall notify us immediately of any malfunctions, and claims for damages shall remain unaffected if it culpably fails to do so.
- (4) Tools and/or production equipment we pay for separately become our property. Instead of a handover, the supplier stores the tools and/or production equipment based on a loan contract starting at the time in which the tools and/or production equipment were/was accepted or deemed such. We are entitled to terminate this loan contract with four weeks' notice; the right to extraordinary termination without notice for an important reason remains unaffected. In the event of termination, the tools or production equipment shall be relinquished by the expiry of the termination period; the supplier waives a right of retention in this regard.
- (5) The supplier shall keep all illustrations, drawings, calculations and other documents and information received strictly confidential. They may only be disclosed to third parties with our express consent. The confidentiality obligation shall also apply after completion of this contract and shall expire if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known.

§ 11

Working in our Factory

- (1) ***Persons who enter our factory areas in fulfillment of a supply contract are subject to the provisions of our company rules.***
- (2) ***We shall only be liable for any accidents or damage in the event of wilful intent or gross negligence on the part of our managerial staff.***

§ 12

Place of Jurisdiction – Place of Performance – Choice of Law

- (1) If the supplier is a businessperson, the place of jurisdiction shall be the court with jurisdiction over Lüdenscheld, Germany. However, we shall also be entitled to take action against the supplier at its general place of jurisdiction.
- (2) Unless otherwise stated in the order, the place of performance shall be Lüdenscheld.
- (3) If the supplier is domiciled abroad, the business relationship shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna UN Convention on Contracts for the International Sale of Goods).

§ 13

Data Protection Clause

For the duration of the business relationship, including the initiation and processing phase, the supplier's data shall be stored and processed in an automated file. This is the first time we inform the supplier of this. Legal basis: §§ 28, 33 Federal Data Protection Act.