

## 1. Scope of application

Unless otherwise agreed in writing, this and all future orders or letters of appointment shall be exclusively governed by these Purchasing Terms and Conditions. The customer and its affiliated companies (within the meaning of Section 15 ff of the German Stock Corporation Act (AktG)) shall not be bound by contrary or additional General Terms and Conditions of the contractor even if the customer does not expressly object to those Terms and Conditions or accepts delivery of the goods or services without reservations.

## 2. Bids, orders and correspondence

- 2.1 Bids from the contractor are to be submitted free of charge. Remuneration will only be paid for cost estimates if agreed in writing in advance.
- 2.2 Supplementary oral agreements to the order or letter of appointment shall only be effective when confirmed by the customer in writing.
- 2.3 All correspondence from the contractor must state the order number, the date of the order or appointment and the material designation and number allocated and/or advised by the customer.

## 3. Performance: Quality, subcontractors and works regulations

- 3.1 In the supply of the goods or performance of the services, the contractor is to take all the necessary care which an experienced contractor would take in relation to the specific work and circumstances to avoid any delay (even in parts of the work) and to minimize risks and hazards in relation to property, life and limb and the environment. He is also to ensure that the customer and third parties do not suffer any additional difficulties in fulfilling their contracts, these being especially, but not limited to, costs or delays, on account of his performance, and is to take all reasonable action to enable operations and workflows at the customer to be maintained in the usual scope.
- 3.2 The contractor is obliged to provide the customer with all information which serves the objectives set out in section 3.1 promptly and, at the customer's request, to assist actively in the planning and coordination of work when adjustments to the sequence and scope of work are necessary, and to exercise the necessary flexibility in the performance of his order.
- 3.3 Materials for pressure-retaining components shall, if not otherwise specified, be supplied in accordance with VGB Standard S-109, "Material specification for components under pressure in fossil-fired power plants".
- 3.4 The contractor must maintain a verifiable and auditable Quality Management System (e.g. to ISO 9000 ff.) suitable for the goods and services, an Environmental Management System (e.g. to ISO 14001) and an Occupational Health and Safety Management System (e.g. to OHSAS 18000). The customer shall be entitled to review the system, its application and compliance with it, in quality audits.
- 3.5 To the extent that waste, as defined by the German law on waste, is created by the contractor's supplies or works, he shall recycle or dispose of that waste as stipulated in waste law – subject to any deviating written agreement – at his own cost. Ownership, risk and responsibility under waste law shall be transferred to the contractor at such time as the waste is created.
- 3.6 Involvement of subcontractors for significant parts of the works shall require the prior written consent of the customer. The contractor is to impose all obligations vis-à-vis the customer concerning the work he has taken on on the subcontractors and ensure compliance with them.
- 3.7 The contractor is to familiarize himself with the works regulations applicable at the relevant site (e.g. safety regulations) and to comply with them.

## 4. Information and planning documents

- 4.1 All information, including drawings and other documents, which the customer requires for the storage or further processing, installation, maintenance, testing or repair of the materials supplied, such as information on composition and durability, safety data sheets, instructions on processing and marking specifications, etc., is to be provided to the customer by the contractor in due time, unbidden and at no charge.
- 4.2 Machinery and technical work equipment which is covered by the Ordinance on the Equipment and Product Safety Act (GPSG) and the Machinery Directive is to be supplied with operating and maintenance instructions, an EC declaration of conformity, CE marking and all other relevant documents required. If a test mark has not been issued, the contractor is to demonstrate compliance with the regulations stated above.
- 4.3 Operating and maintenance instructions for machinery and technical work equipment which is destined for power plants are, unless otherwise agreed, to be supplied in accordance with VGB Standard S-831, "Provision of technical documentation for Energy Supply Units".
- 4.4 The handling and marking of the materials supplied are to take place strictly in accordance with the applicable provisions of the EC Directive on the marketing and use of dangerous substances and preparations and the national Hazardous Substances Ordinance.
- 4.5 Drawings, designs, etc. produced by the contractor in response to special information from the customer shall pass into the unrestricted ownership of the customer without any additional remuneration, irrespectively of whether they remain in the possession of the contractor or not.

## 5. Despatch

- 5.1 Prices shall be carriage paid to consignee, and where applicable including duties, charges, insurance and packaging.
- 5.2 Even when INCOTERMS or phrases such as "ex-works" or similar are used, the contractor shall be obliged to obtain and hand over to the customer the licences, approvals, certificates of origin, movement and preference, other certificates or other documents necessary for free export, transit and import and for the obtaining of concessions on charges in the European Union. The contractor warrants that these are genuine documents with legal validity.
- 5.3 The contractor is to observe the address for shipment stated in the order or letter of appointment. The relevant tariff, transport and packing regulations for rail, road, sea or air transport are to be complied with.
- 5.4 The transport documents are to state not only the address for shipment but also the order data (order number, date of order, delivery point, and where appropriate the name of the consignee and the material designation and number assigned or advised by the customer). Where subcontractors are involved, they are to name the contractor as their client in correspondence and freight documents, always stating the order data.
- 5.5 Unit load devices (1 t and above) are to be clearly and durably marked with the unit weight and the position of the centre of gravity.
- 5.6 The contractor shall only be entitled to make partial deliveries or supply partial services with the consent of the customer.
- 5.7 Delivery dates and delays
  - 5.7.1 The delivery date for the goods or services stated by the customer in the order is binding. The contractor is obliged to inform the customers immediately if circumstances occur and come to his notice which preclude the stipulated delivery date for the goods or services from being achieved.
  - 5.7.2 The contractor may only claim that delays are due to the absence of documents and information

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to be supplied by the customer if he has not received these within a reasonable period after issuing a written reminder.

### 6. Place of performance, inspection and demonstrations of performance

- 6.1 The place of performance for the contractor's goods or services shall be the shipment address or receiving point stated in the order or letter of appointment.
- 6.2 Any contractually stipulated demonstrations of performance and acceptance inspection shall be performed at no cost to the customer and records of these shall be compiled in writing by both parties.
- 6.3 Incoming inspection of goods by the customer only covers externally visible (transport) damage and externally visible deviations in identity and quantity. The customer will notify the contractor of such defects immediately after delivery. For the rest, the customer will notify the contractor of defects without delay as soon as these have been found in the course of normal business operations.

### 7. Prices, invoices and payments

- 7.1 Unless stated otherwise in the order, the price stated in the order or letter of appointment shall be a fixed price. Application of Section 313 of the German Civil Code (BGB) shall remain unaffected.
- 7.2 Invoices must comply with the valid and applicable statutory requirements and contain all details in full so that the customer can check the legitimacy of the invoice and settle it and claim the deduction of input tax. The invoice is to be submitted without copies and once only (unless the customer requests the contractor to re-submit the invoice) and separately to the invoice address stated in the order or letter of appointment. Incorrectly submitted invoices will only be considered received by the customer from the time at which they have been corrected.
- 7.3 The payment period shall begin on the day of receipt of the correct invoice at the invoice address stated in the order or letter of appointment, but not before all conditions agreed for proper invoicing have been fulfilled (e.g. receipt of the defect-free goods, issuance of acceptance certificate for the goods).

### 8. Claims based on defects, contractor's liability and limitations

- 8.1 The contractor warrants that his goods or services have the individually guaranteed characteristics and the contractually agreed quality, are suitable for the use intended by the contract, are free of impairments to their value and serviceability, are in accordance with the generally accepted rules of good engineering practice and the current legal and official regulations, have been produced with the necessary care and will remain free from defects during the warranty period of, unless otherwise agreed, 24 months.
- 8.2 Should the goods or services not comply with the requirements of section 8.1 or should they be defective or deficient for other reasons, the customer shall be entitled to the statutory warranty claims. In urgent cases, or when the contractor is in default with supplementary performance, the customer may rectify the defects immediately itself or have them rectified by third parties at the contractor's cost. If the contractor has issued a guarantee for the quality or durability of the goods or services, the customer may also pursue claims under that guarantee without it being prejudiced by the action taken to rectify the defects.
- 8.3 The contractor shall be liable for defects of title as provided for by law, and in particular for infringement by the goods or services or by their use as contractually agreed of patents or other property rights of third parties in the agreed destination country. If a third party makes claims on the customer in this respect, the contractor shall be obliged to indemnify and hold the cus-

tomers harmless at first written request from and against all claims (including court costs and legal fees) which the customer incurs from or in connection with the claim by the third party. The customer shall not be entitled – without the contractor's consent – to enter into any agreements with the third party to the detriment of the contractor.

- 8.4 The customer or third parties appointed by the customer may perform repairs on the materials supplied even if there are industrial property rights of the contractor.
- 8.5 The legal and/or contractually agreed rights and entitlements in the case of defects of quality and defects of title shall lapse by limitation as stipulated by law.
- 8.6 Apart from the cases of suspension of the period of limitation provided for in law, limitation of rights and entitlements arising from defects shall also be suspended during the time between the notice of defects and rectification of the defects. The warranty period mentioned in section 8.1 shall start anew for goods or services which have been newly delivered, replaced or repaired in whole or in part.
- 8.7 The contractor's liability shall for the rest be governed exclusively by the provisions of law. If claims are made against the customer by third parties, the contractor shall be obliged to indemnify and hold the customer harmless at first written request from and against all claims (including court costs and legal fees) which the customer incurs from or in connection with the claim by the third party to the extent that the contractor or his supplier has caused and is responsible for the defect giving rise to the liability. The customer shall not be entitled – without the contractor's consent – to enter into any agreements with the third party to the detriment of the contractor.
- 8.8 The customer and its legal representatives and employees shall only be liable, on whatever legal grounds, for gross negligence, malicious intent or when the obligation infringed is of material importance to the achievement of the purpose of the contract (cardinal duties). In the case of infringement of cardinal duties by simple negligence, the customer's liability shall be limited to compensation for damages and costs for the damage or loss which is typical of and foreseeable in connection with the contract. This shall not apply to the extent that the customer is compulsorily liable in cases of fatality, injury or damage to health or for damage to privately used objects.

### 9. Intercompany offsetting and prohibition of assignment

- 9.1 All the companies affiliated with the customer shall have an entitlement as joint and several creditors to accounts receivable from the contractor which the customer and the companies affiliated with the customer acquire. These accounts receivable may consequently be offset against accounts receivable by the contractor from any company affiliated with the customer. This shall apply accordingly to rights of retention or other objections.
- 9.2 When the accounts owing to the customer exceed those owing to the contractor, the contractor shall not object to the customer's decision on how the accounts to be offset are to be handled.
- 9.3 The contractor shall make no assignments outside the scope of application of Section 354a of the German Commercial Code (HGB). Exceptional cases shall only be effective with the written consent of the customer.

### 10. Insurance

- 10.1 The contractor must maintain third party liability insurance cover with conditions usual in the industry but with a sum insured of at least 2 million euros per claim for the duration of the contractual relationship including the guarantee and warranty periods. The contractor must demonstrate this to the customer on request; lower

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sums insured may be agreed with the customer in individual cases.

- 10.2 All domestic consignments and freight sent directly to the customer (e.g. deliveries resulting from purchase contracts, contracts for work and materials, maintenance orders or orders for custom-built items, but not material deliveries for work contracts which the contractor performs at customer's plants) are insured during transport by the customer. The customer waives the requirement for liability insurance as set out in ADSp (General German Terms and Conditions for Forwarding Agents), Section 29.1.

### 11. Confidentiality

The contractor undertakes to preserve the confidentiality of all information, knowledge and documents received from the purchaser or of which he has become aware in any other manner from the customer or its affiliated companies, e.g. technical and other data, measured values, technology, operating experience, company secrets, know-how, drawings and other documentation (hereinafter referred to as information), not to divulge such information to third parties and only to use it for the purpose of performing the relevant order or appointment. The contractor undertakes to return all physically provided information such as documents, samples, specimens or similar to the customer thereafter when requested to do so, without retaining any copies or records, and to destroy his own records, compilations and evaluations which contain information without delay on request by the customer and to confirm this to the customer in writing. The customer remains the owner of and holds all industrial property rights to information from the customer.

### 12. Advertising material

Reference may only be made to the business link with the customer in information and/or advertising material with the prior, express and written consent of the customer.

### 13. Compliance with codes of conduct and the law

- 13.1 The customer draws attention to the Code of Conduct applicable to STEAG GmbH and companies affiliated to STEAG GmbH, which is posted on the internet (<http://www.STEAG.com/compliance.html>). The contractor is expected to observe this Code of Conduct and the codes on "Minimum Standards of the UN Global Compact" and "Core Labour Standards of the International Labour Organization (ILO)".
- 13.2 The contractor is obliged not to take any actions or make any omissions which could lead to him becoming liable to criminal prosecution, and to comply with all laws and regulations concerning him and the business relationship with the customer. On violation, for example, of the Act to Combat Moonlighting and Illegal Employment, in the case of fraud or breach of trust or crimes against fair competition, granting undue advantages or corruption, the customer shall, without prejudice to all further claims, have the right to withdraw from or terminate all transactions and contracts with the contractor without notice.
- 13.3 In particular, the contractor shall be obliged to comply with all statutory provisions for the protection of employees, in particular the provisions of the Act on the Secondment of Employees (AEntG), the Temporary Employment Act (AÜG) and the Minimum Wages Act (MiLoG), and with the collective bargaining arrangements applicable to the contractor's company. The contractor shall ensure that its subcontractors comply with these requirements and are contractually obliged to do so. The contractor shall indemnify the customer in the internal relationship with the customer from any claims brought against the customer on account of a violation by the contractor or one of its subcontractors against the AEntG, the AÜG, the MiLoG and any other statutory provisions which may stipulate liability.

### 14. Suspension, termination

- 14.1 The customer is entitled at any time to instruct the contractor in writing to suspend all or part of the work under the contract (suspension of contract) or to terminate the contract – even after ordered suspension – in whole or in part without giving reasons.
- 14.2 In the event of suspension of contract by the customer, the contractor shall properly preserve and store the goods and services or work affected by the suspension. In this case, the contractor shall be entitled to compensation for the costs demonstrably incurred by the contractor as a result of the suspension and to adjustment of the contractually agreed deadlines.
- 14.3 In the event of termination in accordance with section 14.1 above, the customer shall reimburse the contractor for the goods supplied and services performed in accordance with the contract up to the date of receipt of the notice of termination on the basis of the agreed prices for the partial services. In addition, the customer shall reimburse the contractor for reasonable and unavoidable expenses incurred by the contractor with regard to the contract and which cannot be used by the contractor in any other way. With regard to services under a contract for work and services, Section 648 of the German Civil Code (BGB) shall apply, subject to the proviso that the contractor's claim for remuneration pursuant to Section 648 sentence 2 of the German Civil Code (BGB) is limited to 10% of the agreed remuneration for the part of the goods/services not yet supplied/performed. The contractor shall only be entitled to a further claim for remuneration if the contractor has demonstrably incurred higher expenses in connection with the contract.
- 14.4 The right to terminate the contract for cause remains unaffected.

### 15. Data privacy

- 15.1 The customer is entitled to use personal data in compliance with the provisions of German data protection law for the performance of the contract. The following clauses refer to customer's information duties under the General Data Protection Regulation.
- 15.2 With the information in the following clauses, you are informed by the customer about the processing of your personal data by the company and about the rights to which you are entitled under the new data protection law.
- 15.3 The controller responsible for data processing is the company placing the specific order.
- 15.4 You can contact the Group Data Protection Officer by post at the following address:  
STEAG GmbH  
Group Data Protection Officer  
Rüttenscheider Str. 1-3  
45128 Essen.
- 15.5 The customer processes personal data (such as name, address, date of birth, beginning and end of the respective use, invoice and payment data) in compliance with the EU General Data Protection Regulation (GDPR), the new German Federal Data Protection Act (BDSG), and all other relevant data protection regulations.
- 15.6 The customer needs the information provided prior to the conclusion of the contract to assess the risk to be assumed by the customer. If the contract is concluded, the customer processes such data to implement the contractual relationship, e.g. for contract management or invoicing.
- 15.7 The conclusion and performance of the contract are not possible without the processing of your personal data. Customer's processing of personal data for pre-contractual and contractual purposes is based on Art. 6 para. 1 lit. b GDPR. The customer also processes your data in order to safeguard the legitimate interests of the customer or third parties (Art. 6 para. 1 lit. f) GDPR.

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- 15.8 The customer does not intend to pass on personal data for advertising purposes.
- 15.9 In order to fulfil his contractual duties and legal obligations, the customer also uses external service providers. A list of the contractors and service providers used by the customer will be made available on request.
- 15.10 In addition, the customer can transfer your personal data to other recipients, such as to authorities for the fulfilment of legal notification obligations.
- 15.11 The customer will delete your personal data as soon as they are no longer required for the above-mentioned purposes. Personal data may be stored by the customer for any period during which claims can be brought against the customer (statutory period of limitation of three or up to thirty years). In addition, the customer stores your personal data where required to do so by law.
- 15.12 You are entitled to request information about your personal data stored by contacting the customer at the addresses mentioned above. You are also entitled to have your data corrected or deleted under certain circumstances. Furthermore, you may also have the right to restriction of your personal data and the right to receive the data made available to us in a structured, commonly used and machine-readable format.
- 15.13 You have the right to lodge a complaint with the above mentioned Data Protection Officer or with a supervisory authority.

### **16. Venue for disputes and applicable law**

- 16.1 When the contractor is a company, partnership or trader, any disputes between the parties shall be settled before a competent court in Essen, Germany. The customer is however also entitled to file actions at the court responsible for the location of the contractor's registered office.
- 16.2 All legal relationships between the contractor and the customer shall be governed by the law of the Federal Republic of Germany, excluding the conflict of laws rules of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.