

General Terms and Conditions of Purchase and Payment

1. Scope of application

(1)

For all deliveries and services to companies within the SOMMER Group, only these terms and conditions shall apply, on the basis of which we conclude contracts with our Suppliers. We do not recognize any conflicting terms or terms deviating from our conditions, even if we do not expressly object to them, unless and to the extent that we have expressly agreed to their validity.

(2)

If we are in an ongoing business relationship with a business partner, our general purchasing and payment terms shall apply to the entire business relationship, even if they are not expressly referred to in individual cases.

(3)

If we do not grant our consent to deviating provisions, and our Suppliers are unwilling to provide deliveries or services in accordance with our terms and conditions, the Supplier shall be obliged to reject our purchase order. By carrying out the delivery or performing the services, the Supplier shall be deemed to have accepted our Terms and Conditions of Purchase and Payment.

(4)

Our Conditions of Purchase and Payment apply exclusively to business customers.

2. Formation of the contract

(1)

Offers shall be provided free of charge. The offers shall be submitted in writing, unless otherwise agreed.

(2)

Only orders placed in writing shall be legally binding. Orders placed orally or by telephone shall become legally binding only upon subsequent written confirmation, subject to our acceptance. The same shall apply to oral collateral agreements and amendments to the contract, insofar as they are not agreed after the contract has been concluded.

(3)

Each order shall be confirmed by the Supplier by transmittal of the order number without undue delay (generally within three (3) days). If the Supplier does not confirm the order within fourteen (14) days of its submission, we shall not be legally bound by the order.

3. Components of the contract

The components of the contract shall apply in the following order of precedence:

- a) our order in writing,
- b) any negotiation minutes, if prepared, including annexes,
- c) our General Terms and Conditions of Purchase and Payment
- d) specifications including preliminary remarks, drawings, samples, and other related documents,
- e) otherwise, the statutory provisions.

4. Delivery dates

(1)

Delivery or performance deadlines specified in our orders shall be binding on our suppliers, unless expressly agreed otherwise. The Supplier shall be obliged to inform us in writing without undue delay if circumstances arise or become apparent indicating that it is prevented from performing its obligations, in particular that the agreed delivery time cannot be met. This shall also apply to obvious circumstances. As soon as the obstructing circumstances cease to exist, the Supplier shall resume performance of the services without undue delay, while notifying us in writing thereof. He shall be in default without the need for a reminder if he fails to meet the agreed delivery dates. Goods to be delivered to us shall be deemed delivered upon receipt at our premises or at the agreed alternative place of destination.

(2)

In the event that we do not assert claims in an individual case of the Supplier exceeding deadlines or time limits, this shall not constitute approval of the delay nor a waiver of our rights, whether in respect of the current breach or any future breaches.

(3)

In the event of delay in delivery, we shall be entitled to the statutory rights and remedies. In particular, after the fruitless expiry of a reasonable grace period, we shall be entitled to claim damages in lieu of performance and to rescind the contract. to claim damages in lieu of performance and to rescind the contract. If we claim damages, the Supplier shall be entitled to prove that it is not responsible for the breach of duty.

(4)

Force majeure shall only excuse the Supplier if it has complied with its duty to notify.

5. Scope of delivery

(1)

If quantities are delivered or services performed in excess of those ordered, we shall not be obliged to accept them. If, however, we accept them, we shall be entitled to an appropriate extension of the payment terms to that extent.

(2)

If quantities are delivered or services are performed in excess of those ordered, we shall therefore not be obliged to accept them. If, however, we accept them, our payment terms shall apply to such excess quantities or services (see Clause 8). In this case, the services actually rendered shall be compensated at the agreed unit prices. Where quantity-based prices exist, these shall apply.

(3)

Until the Supplier confirms our order in accordance with Clause 2(3) above, we may reduce the scope of the order without restriction, without any remuneration or costs becoming due for the cancelled portion of the performance.

(4)

For construction products listed in Part I, Section A of the List of Technical Building Rules, the Supplier shall provide proof of conformity, without separate request, at the latest upon delivery.

(5)

All required documents and evidence relating to the delivery item shall be handed over to us upon delivery of the item, or at the latest transmitted within five (5) days after delivery (receipt by us). Required are all documents and evidence owed under the contract, as well as in particular those necessary for placing the product on the market and for its use in accordance with the intended purpose, in order to substantiate the agreed characteristics of the product and its suitability.

6. Changes to service (Amendment)

(1)

We shall be entitled to request subsequent changes to the characteristics of the performance within the scope of the Supplier's capabilities, unless this is unreasonable for the Supplier.

(2)

If the Supplier has any reservations regarding the change in performance, it shall notify us thereof in writing without undue delay. If we do not share the Supplier's concerns, we remain responsible for our information and requirements.

(3)

If changes to the characteristics of the performance affect the basis of the price for the contractually agreed services, a new price shall be agreed, taking into account any additional or reduced costs. The agreement shall take into account any effects of the change in performance on other contractual terms and conditions, in particular on deadlines and time limits. This agreement shall be concluded without undue delay. If the Supplier does not assert any time-related effects in its offer for the modified performance, it shall be assumed that the change is time-neutral.

7. Pricing

(1)

If a price is specified in the order, it is binding. The Supplier's so-called list price clauses shall not be binding upon us. Unless otherwise agreed in writing, the price shall be DDP in accordance with Incoterms® 2020, including any packaging costs. The return of packaging shall require a separate agreement.

(2)

The agreed unit prices and lump-sum prices, including any discounts and cash discounts granted, shall also apply to variation and supplementary orders.

(3)

The price includes statutory value added tax, unless otherwise agreed.

8. Conditions of purchase

(1)

Unless otherwise agreed, we shall make payment, following receipt of the invoice and inspection of the goods by us, at our option within fourteen (14) days with a 3% cash discount, within thirty (30) days with a 2% cash discount, or within sixty (60) days net.

(2)

Invoices that do not state our complete order number shall be deemed received only once the Supplier has subsequently

provided such information. Only then shall the cash discount period commence.

(3)

In case of price and quantity differences, the non-disputed amount will be transferred according to the deadlines, and the remaining amount will be retained until the dispute has been settled. Such retention shall not entitle the Supplier to charge interest on arrears. We shall be entitled to take the cash discount on the amount paid; the cash discount period for the retained amount shall commence only upon settlement of the difference.

9. Defects investigation, liability for defects

(1)

We shall comply with our inspection and notification obligations if we inspect the delivered goods for any deviations in quality and quantity within a reasonable period calculated from delivery to us, and notify the Supplier of any identified or apparent defects. As a rule, a period of five (5) working days shall be deemed reasonable. In the case of defects not detectable upon inspection, this period shall run from the time of discovery. The duty to inspect shall, upon delivery of the goods, be limited to defects that become apparent during our incoming goods inspection based on an external examination of the packaged goods, including the delivery documents (e.g. transport damage, incorrect delivery, or short delivery). In particular, no measures shall be taken that may result in contamination, damage, or deterioration of the goods prior to their use or processing (e.g. by removing protective films).

For Glass deliveries, following conditions are applicable: The removal of foil packaging and the detachment of panes from racks shall only take place in the course of further processing or use, as part of a procedure customary in the ordinary course of business in our industry. Only upon removal or detachment shall the duty to inspect extend to defects that then become apparent.

(2)

We shall be entitled, at the Supplier's expense and after expiry of the period for subsequent performance, to remedy defects ourselves or have them remedied by third parties. We may also set a reasonable deadline with the indication that we will refuse acceptance of remedy of the defect after the unsuccessful expiry of the deadline. In such case, we shall be entitled, in accordance with the statutory provisions, to reduce the remuneration or withdraw from the contract, as well as to claim damages or reimbursement of futile expenses.

(3)

The costs and expenses necessary for inspection and subsequent performance shall be borne by the Supplier even if it turns out that no defect actually existed. Any claims in the event of an unjustified request for defect rectification shall remain unaffected; however, liability in this respect shall only apply if we knew or, due to gross negligence, did not know that no defect existed.

(4)

The limitation period shall be thirty-six (36) months, calculated from the transfer of risk, unless the mandatory provisions of Sections 478 and 479 of the German Civil Code (BGB) apply. The 3 limitation period shall apply accordingly to claims arising from defects in title; however, statutory limitation periods for third-party proprietary claims for surrender pursuant to Section 438(1) No. 1 BGB shall remain unaffected. Claims arising from defects in title shall in any event not become time-barred as long as the third party within the meaning of Section 435 BGB is still entitled to assert the right against us, in particular due to non-expiry of limitation.

By way of derogation from the above, the limitation period shall be ten (10) years and three (3) months for items which, in accordance with their customary use, are used for a building and cause its defectiveness.

(5)

In the case of a consumer sale, the provisions of Sections 478 and 479 of the German Civil Code (BGB) shall remain unaffected.

(6)

The Supplier shall perform the services under its own responsibility in accordance with the contract. In doing so, it shall observe trade usages, the generally recognised rules of technology, as well as applicable statutory provisions and official regulations.

(7)

Without prejudice to its liability for defects or deviations in type or quantity, the Supplier shall continuously ensure, verify, and document compliance of the delivery items with the generally recognised rules of technology, the agreed quality, and the contractually presumed fitness for use (quality assurance). The Supplier's quality assurance system to be implemented shall, as a minimum, meet the requirements of DIN EN ISO 9001 and DIN EN ISO 14001 or an at least equivalent system.

(8)

If the Supplier has any concerns regarding the quality of materials or components supplied by us, the services of other contractors, or the suitability of the ordered goods for the intended purpose, it

shall notify us thereof in writing without undue delay, i.e. prior to processing or machining, or before ordering goods from upstream suppliers. If a defect is attributable to materials or components specified or supplied by us, to the work of other contractors, or to the unsuitability for the intended purpose, the Supplier shall be liable. Unless it has made the notification referred to in the preceding sentence.

(9)

Our claims for supplier recourse shall also apply where the defective goods have been further processed by us or by another contractor, e.g. by incorporation into another product.

10. Product liability – Indemnity

(1)

To the extent that the Supplier is responsible for product damage, it shall be obliged to indemnify us against third-party claims for damages insofar as the cause lies within its sphere of control and organisation. Indemnification shall be provided on first demand. Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Sections 683 and 670 of the German Civil Code (BGB) arising from or in connection with claims asserted by third parties, including recall actions carried out by us.

11. Counterfeit, fraudulent and suspicious products

(1)

The Supplier acknowledges that counterfeit, fraudulent, and suspicious products may pose a risk to product quality.

For this reason, the Supplier shall implement appropriate processes to eliminate or minimise the risk of using such products. Upon our request, these processes shall be evidenced and documented, and information on sources of supply shall be provided.

12. Industrial property rights, drawings, other documents

(1)

We retain all ownership and copyright in all drawings, calculations, and other documents provided to the Supplier. Such documents shall not be made accessible to third parties without our express written consent. They shall be used exclusively for the manufacture based on the order. Upon completion of the order, these shall be returned to us without request. They shall be kept confidential vis-à-vis third parties.

(2)

The Supplier acknowledges all our industrial property rights and patents arising from the documents.

(3)

The Supplier undertakes to carefully store the goods ordered by us, the manufacture, modification, or special execution of which it has undertaken at our request or in accordance with our drawings or descriptions, and not to supply them to third parties without our prior written consent, regardless of whether they are protected by industrial property rights or not.

(4)

The Supplier undertakes to comply with the tolerances specified in the drawings; deviations shall only be permitted in individual cases with our prior written consent. The Supplier's sole responsibility for the delivery shall remain unaffected by our approval of or provision of drawings and other documents.

13. Retention of title

(1)

We accept a simple retention of title by our Supplier. Any retention of title extending beyond this shall not be recognised.

14. Provision

(1)

If we provide parts to the Supplier, we shall retain title to such parts. Any processing or transformation by the Supplier shall be carried out on our behalf. If our goods subject to retention of title are processed together with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our goods (purchase price plus VAT) to the other processed items at the time of processing.

(2)

If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the retained goods (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the Supplier's item is to be regarded as the principal item, it shall be deemed agreed that the Supplier transfers co-ownership to us on a pro rata basis; the Supplier shall hold sole ownership or co-ownership in safekeeping for us.

15. Output inspection by the Supplier

(1)

The Supplier shall be obliged to inspect the performance to be rendered under the contract immediately prior to delivery to us to ensure that it fully complies with the contractual requirements and

is, in particular, free from defects (final inspection). The result shall be recorded on the day of the inspection. The Supplier shall provide evidence of the performance of this final inspection and its result by handing over the inspection report upon delivery. If the Supplier fails to carry out this inspection or performs it inadequately, all resulting disadvantages for us shall be at its expense.

16. Jurisdiction/Place of fulfilment/Governing law/Miscellaneous

(1)

If our Supplier is a merchant (Kaufmann), the place of jurisdiction for all disputes arising from the contract, including actions relating to cheques and bills of exchange, shall be Hof/Saale, Germany, exclusively. We shall, however, also be entitled to bring an action at the Supplier's general place of jurisdiction or before the court having jurisdiction for the agreed place of delivery.

(2)

Unless otherwise stated in the order, our place of business shall be the place of performance.

(3)

This contract and all disputes arising out of or in connection therewith shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(4)

The Supplier shall not be entitled to set off counterclaims unless they are undisputed or have been finally adjudicated.

The Supplier shall not be entitled to assert a right of retention based on counterclaims arising from other contracts.

(5)

The Supplier may only subcontract the performance of the services or essential parts thereof to third parties with our prior consent. Consent shall not be required for minor partial services or for partial services for which the Supplier's operations are not equipped.

17. Safety at work, environment protection

(1)

The Supplier undertakes to comply with the applicable statutory provisions on the treatment of employees, occupational safety, and environmental protection, and to work towards reducing any adverse impacts on people and the environment in its activities and manufacturing processes.

(2)

The Supplier shall comply with and apply the applicable regulations governing the handling and placing on the market of hazardous substances, including in particular the European Chemicals Regulation (REACH), the German Chemicals Act and the Hazardous Substances Ordinance.

(3)

The Supplier shall further comply with the applicable regulations on the disposal of waste and residual materials and shall inform the Purchaser of any requirements relating to product handling, storage, and disposal.

(4)

The Purchaser shall be entitled to request evidence of the management system operated by the Supplier, where applicable, and to carry out an audit at the Supplier's premises.

18. Severability Clause

(1)

If any of the above provisions is invalid for any reason whatsoever, the validity of the remaining provisions shall remain unaffected. In the event that any provision is invalid, the Supplier shall be obliged to agree with us on an effective provision that comes as close as possible to the invalid provision in economic terms.