

## GENERAL TERMS OF PURCHASE

### 1. Application

- (1) The general terms of purchase contained herein (the „Terms“) shall apply exclusively to all orders placed by SUMITOMO ELECTRIC Schrumpf-Produkte GmbH, Oststr. 89, 22844 Norderstedt („SESP“) with all of its suppliers („Vendor“). Any general conditions of the Vendor conflicting and/or supplementing the Terms are not binding upon SESP. This applies also, if SESP shall not expressly object to such conditions or if SESP shall fulfil its obligations without objecting to such conditions.
- (2) The Terms together with the document of which they form a part or by which is referred to them contain all relevant terms of the agreement entered into with the Vendor.

### 2. Order

- (1) The Vendor may not assign any rights or claims under this contract to a third party without SESP's prior written consent.
- (2) The Vendor may not perform the order or substantial parts thereof through a third party without SESP's prior written consent.

### 3. Delivery

- (1) Delivery dates specified in the order are binding. The Vendor may make advance deliveries only with SESP's prior written consent. The Vendor shall notify SESP immediately by telefax or e-mail of any known or anticipated delay in the performance of his obligation stating:
  - a) the anticipated period of the delay,
  - b) the reason for the delay and
  - c) what action is being taken by the Vendor to overcome such delay.
- (2) Shipping documents, such as delivery notes, consignment notes and certificates of compliance as well as tags are to be sent with the consignment and on the day of shipment, under separate cover to SESP. The delivery note must specify the order number, the item number, the exact particulars, number and quantity of the goods supplied and the specifications applicable to the order. Based on a hundred percent (100%) inspection the Vendor shall check outgoing goods, and confirm in writing that the goods supplied comply with the specifications agreed in the order. The goods to be dispatched must be duly packed and marked in accordance with the applicable specifications.
- (3) Return consignments of empty containers, packing material and loading units will be shipped carriage forward at the Vendor's risk and expense. The use of loan packaging, containers and other material required for shipment which is the property of third parties is subject to SESP's prior written consent and must be specified on the delivery note.
- (4) SESP reserves the right to return at the Vendor's risk and expense advance deliveries, any delivery which is not in compliance with the order and any goods in excess of the quantity specified in the order. The Vendor is not entitled to partial deliveries.
- (5) In addition to any other rights, in case of default in delivery SESP shall after the expiration of a grace period of four weeks SESP be entitled to rescind the contract or claim

damages for the failure to perform under the contract. In case of default in delivery, the Vendor shall pay the following contractual penalties to SESP:

- 0,25% of the value of goods under the order from the first to the 30<sup>th</sup> day of default in delivery,
- 0,5% of the value of goods for each subsequent day.

SESP agrees that in the case of a default in delivery less than fourteen (14) days, no penalty shall become due and payable. However if the default in delivery exceeds fourteen (14) days the penalty shall be calculated starting from the first day of default in delivery. The penalty shall be limited to 10 % of the value of the goods ordered in each individual case of default in delivery. In the event that the damages of SESP caused by a default in delivery exceed the amount of penalties as defined above, the Vendor shall also be liable for such excess amount.

#### **4. Transfer of risk, Title**

- (1) Unless otherwise agreed, all deliveries shall be made delivered duty paid (DDP) Norderstedt.
- (2) SESP does not accept retentions of title (a) referring to other claims than the one for the purchase price of the relevant shipment, (b) barring the sale or the processing of delivered goods in the ordinary course of business, or (c) extending to claims for the payment of the purchase price against the customers of SESP, or processed or mixed goods.
- (3) Goods that fail to comply with the specifications of the order will be rejected. In cases where the Vendor is given the opportunity of inspecting a rejected good before return by SESP such inspection must be made within fourteen (14) days of notification by SESP. At the expiration of that period the rejected good will be dispatched without further notice to the Vendor at the Vendor's risk and expense. The Vendor shall be liable for all costs and expenses arising from the non-compliance of the goods with the order.

#### **5. Warranty**

- (1) The Vendor warrants to SESP that the goods delivered conform to the agreed specifications of the order, are made from the agreed material, are free from defects in (a) material, (b) manufacturing or (c) design having regard to the state of art at the time of the order as well as (d) defects, arising from the unfitness for the general or agreed upon use of the goods, limiting such fitness or lowering or nullifying the value of the goods delivered, and conform to all requirements under applicable Law or government regulations.
- (2) SESP retains all rights and claims for breach of contract under German Law. SESP is entitled to determine whether goods which are defective within the meaning of para. 1 shall be repaired or replaced at the Vendor's cost.
- (3) The warranty period shall be 24 months starting from the transfer of risk.
- (4) When goods supplied are subject to limitation of shelf life or periodical checks the Vendor must specify the following:
  - storage measures to be undertaken to ensure the goods remain in serviceable condition;

- the shelf life period commencing with the date of manufacturing.

Shelf life limited goods must be supplied to SESP with at least ninety percent (90%) remaining shelf life.

## **6. Prices**

All prices agreed in the order are firm and binding.

## **7. Terms of Payment**

- (1) The Vendor shall submit an invoice for each order within five days after delivery of the goods covered by the respective order. Each invoice must indicate the purchase order number, part number, item number, descriptions of the goods supplied and other details of the delivery note. As far as legally permissible SESP has the right to offset or deny performance of any claim it has against the Vendor against any claim due by SESP to the Vendor.
- (2) The payment of the invoice does not constitute a waiver of any warranty or product liability rights in regard to the goods delivered and does not exclude any later issuance of notices of defect.
- (3) Unless otherwise agreed, SESP pays the purchase price with a cash discount of 3 % within fourteen (14) days or net within thirty (30) days each from the agreed date of delivery and receipt of invoice whichever is later.

## **8. Proprietary Rights**

- (1) The Vendor warrants that the manufacturing, the sale and use of the goods which are supplied under the order are not infringing any patent and any industrial, intellectual or other proprietary right. The Vendor undertakes to hold SESP harmless and to indemnify SESP for all costs, losses, damages and liabilities incident thereto which may be incurred on account of such infringement or such alleged infringement and shall at its own expense defend all claims, suits and actions against SESP in which such infringement is alleged. SESP shall notify the Vendor without undue delay of such claims, suits and actions.
- (2) Should any good supplied by the Vendor by final court decision be held to infringe any patent or other proprietary right, the Vendor shall at its option procure for SESP the right to sell or use the good free of any liability for infringement or replace the good with a non-infringing substitute otherwise complying with the specifications of the order. This clause is limited to infringements of patents and any industrial, intellectual or other proprietary rights arising in the countries of the European Union.

## **9. Confidentiality**

Information exchanged between SESP and the Vendor which are marked as confidential or proprietary shall not be disclosed by either party without the prior written consent of the other party.

## **10. Liability**

- (1) The Vendor shall indemnify and hold harmless SESP against all claims of third parties arising out of defects of goods, provided that the cause herefor originated from the Vendor's sphere.
- (2) In this context the Vendor shall also be liable to reimburse SESP any expenses incurred pursuant to Sec. 683, 670 German Civil Code, originating from or arising out of any necessary actions of recall in regard to the defective products.

## **11. Governing Law**

- (1) The contract is governed by the laws of the Federal Republic of Germany. The trade terms under this contract, are governed by and interpreted under the provisions of the official ICC Rules for the Interpretation of Trade Terms (Incoterms) and its Supplements prevailing at the date of the delivery of the goods hereunder.
- (2) Hamburg shall be place of exclusive jurisdiction with respect to all legal disputes arising from or in connection with the contractual relationship. Notwithstanding such agreed jurisdiction, SESP shall always be entitled to bring legal action at any other place of jurisdiction competent under applicable Law.

## **12. Miscellaneous**

The employees of SESP (excluding the legally required bodies, and persons holding full powers of attorney, as well as persons authorised hereto) are neither entitled to change or amend the conditions or the content of contracts concluded nor to give any commitments or representations.