

Terms and Conditions of Purchase of STULZ GmbH

(Last updated: January 2025)



1. General information

- 1.1. We order exclusively on the basis of these Terms and Conditions of Purchase. We do not accept any conflicting, deviating or supplementary terms and conditions of the Supplier unless we have expressly agreed to their validity in writing. This requirement of consent shall also apply if the Supplier's delivery is accepted without reservation in the knowledge of the Supplier's general terms and conditions. The Terms and Conditions of Purchase shall also apply to all future orders placed with the Supplier, even if their validity has not been expressly agreed anew.
- 1.2. The Terms and Conditions of Purchase shall only apply for contracts to entrepreneurs (Section 14 of the German Civil Code (BGB)), legal entities under public law or special funds under public law.
- 1.3. If we subcontract orders received to the Supplier, the terms and conditions of our customer, which the Supplier must request from us, shall apply in addition to these Terms and Conditions of Purchase.
- 1.4. Orders, call-offs, contracts of all kinds, their ancillary agreements, amendments or supplements as well as legally relevant declarations and notifications by the Supplier in relation to the contract (e.g. setting of deadlines, dunning letters, rescission), shall only be valid if they are made in writing. "In writing" also covers declarations sent by fax, email or other form of remote data transmission. A signature is not required to satisfy the requirement for the written form. The aforementioned requirement for the written form shall also apply to the waiving of this requirement itself.
- 1.5. The Supplier shall be bound by its offers for at least 30 days.

2. Delivery deadline, delayed delivery, contractual penalty

- 2.1. Agreed deadlines are binding. The punctuality of deliveries without assembly or installation shall be determined by their receipt at the place of receipt stipulated by us, while the punctuality of deliveries with assembly or installation as well as of contracted services shall be determined by their acceptance. The Supplier is obliged to inform us immediately if he is likely to be unable to meet the agreed delivery time.
- 2.2. Should the Supplier fall into arrears with the delivery/services, we shall be entitled to impose a contractual penalty ranging from 0.3% of the net final invoice amount per business day to a maximum of 5% of the net final invoice amount. The right to make further claims remains reserved. A contractual penalty that has become payable shall be offset against the asserted damage caused by delay. We shall be entitled to declare the reservation of the contractual penalty until the final payment.

3. Transfer of risk, delivery, prices, reservation of title

- 3.1. In the case of deliveries with installation or assembly and in the case of services under a contract for work and labour, the risk shall pass to us upon acceptance, in the case of other deliveries upon handover at the place of receipt specified by us.
- 3.2. The prices agreed are fixed prices. They incorporate free delivery to the place of use, including packaging.
- 3.3. If, under a deviating agreement, freight and packaging costs are borne by us, the Supplier must account for and document these separately in its invoices.
- 3.4. Partial performances require our approval. Deliveries in excess of those agreed upon must be picked up immediately by the Supplier at our request.
- 3.5. Early deliveries likewise require our approval. In the event of a delivery being made before the agreed date, we reserve the right to return the consignment at the cost and risk of the Supplier. In the event of an early delivery not being returned; the goods shall be stored at our premises until the delivery date at the cost and risk of the Supplier. The invoice shall be paid in accordance with the agreed deadline.
- 3.6. Delivered goods shall become our property when they are handed over. The Supplier shall ensure that no third-party rights (such as reservation of title, lien, etc.) exist, and shall indemnify us from third-party claims in this respect.

4. Invoices, payment, offsetting, retention, assignment

- 4.1. Invoices must be open to scrutiny and sent to our headquarter in Hamburg, in accordance with the agreed billing rules. All necessary documents such as carriage notes, drawings, weighing slips, stock lists, etc. should be attached to the invoices. Work done at hourly rates should be invoiced monthly with the required evidence attached, including details on the specific individual services performed and the time and materials expended. Invoices which have not been properly drawn up shall only be deemed to have been received by us at the time of their correction.
- 4.2. Payments shall be made, unless otherwise agreed, within 14 days with a 3% discount or within 30 days with no discount following delivery or acceptance and receipt of a proper invoice. A cash discount may also be permitted if we offset or retain a reasonable portion of payments on the grounds of defects.
- 4.3. Insofar as the Supplier is obliged to deliver documentation, operating instructions or material test certificates, then the payment period for invoices shall not commence prior to the receipt of these documents.
- 4.4. The payment deadline shall be deemed to have been met if the amount due has been transferred on the due date or at the time of the immediately following weekly STULZ payment run.
- 4.5. Payment default shall always require a prior dunning letter. Any default interest/damages shall be limited to 7.5% percentage points above the base interest rate.

- 4.6. Making a payment shall not constitute recognition that the invoice is correct or that the delivery/service is as specified in the contract.
- 4.7. The Supplier shall only have the right to make offsets if its counterclaims have been judicially determined or are uncontested or recognised by us or are in a close reciprocal relationship to our claim. The Supplier shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship, or has been judicially determined, is uncontested or is recognised by us.
- 4.8. The Supplier may assign claims against us to third parties only with our written consent.

5. Termination or withdrawal for good cause

We can rescind the contract or terminate the contract with immediate effect if the Supplier discontinues its payments, or if the Supplier, we (with due legitimacy) or another creditor applies for insolvency proceedings (pursuant to Sections 14 and 15 of the German Insolvency Act - InsO) or for similar legal proceedings, or if such proceedings have been instigated or their instigation declined due to lack of assets. This shall not affect our claims for damages.

6. Performance of the deliveries/services, claims for defects, supplier recourse, delivery of spare parts

- 6.1. The Supplier's deliveries/services must be made/performed properly and professionally using the most suitable materials and must use state-of-the-art technology and conform to all legal provisions and relevant regulations and directives issued by public authorities, professional and trade associations (particularly the DIN, VDE, and CE provisions pertaining to safety, occupational safety, accident prevention and environmental protection). The provision in Section 434 (3) sentence 1 no. 2 b) BGB (public statements by the manufacturer or seller) shall apply, including in the case of a contract for work and services.
- 6.2. The Supplier must enclose any safety equipment that might be required as part of the delivery at no extra charge.
- 6.3. The Supplier must enclose all documents (test logs, tools, drawings, plans, operating instructions, etc.) which are required for the acceptance, the operation, the maintenance and repair at least in triplicate and without extra charge.
- 6.4. We shall have the right to select the nature of any supplementary performances, including in the case of a contract for work or services. Section 439 BGB shall apply accordingly.
- 6.5. We shall have the right to self-performance, including in the case of purchase contracts. Section 637 BGB shall apply accordingly. To avert acute danger and prevent additional costs, we may, at the expense of the Supplier and without granting a grace period, remedy the defect ourselves or arrange for the defect to be remedied if, due to the urgency of the situation, it is not possible to inform the Supplier in good time and give it the opportunity to take remedial action.
- 6.6. Provided that nothing to the contrary has been explicitly agreed and the law does not provide for a longer limitation period, then the limitation period for claims for defects shall amount to 36 months. In the case of a building, or items that have been used for a building according to their standard manner of use and have caused its defectiveness, the limitation period for claims for defects shall amount to 5 years. The limitation period shall begin on the date the delivery item is handed over to us or to a third party named by us at the place of receipt or use stipulated by us. For delivery items that have to be assembled at the place of receipt or use, the limitation period shall begin once the assembly has been completed, with an agreed trial operation, provided this is carried out without any complaints. If an acceptance is required by law or by the terms of the contract, the limitation period shall begin on the date of successful acceptance. If the agreed assembly, the execution of the agreed trial operation or the contractually agreed acceptance is delayed due to no fault of the Supplier, the limitation period shall begin no later than 6 months after the delivery items have been delivered. In the case of a contract for work and services, the limitation period shall only begin on or after the date of successful acceptance.
- 6.7. The place of performance of the subsequent performance is the place where the product is located as intended.
- 6.8. The Supplier shall, in particular, bear all expenses arising in connection with ascertaining and eliminating defects, including expenses incurred at our premises, particularly: inspection costs, disassembly and reassembly costs, transport, infrastructure, work and material costs and any other costs related to the replacement of defective parts. The Supplier shall bear the expenses necessary for the purpose of inspection and subsequent fulfilment even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected. In this respect, however, we shall only be liable if we recognised or were grossly negligent in not recognising that there was no defect.
- 6.9. If the Supplier fulfils its subsequent performance obligation by supplying a replacement product, then the limitation period for the product/work provided shall begin anew after the delivery/acceptance thereof unless, at the time of the supplementary performance, the Supplier expressly reserved the right to supply a replacement only as a gesture of goodwill, in order to avoid disputes, or in the interest of maintaining the supply relationship. The same shall apply in the event of extensive rectification work on the part of the Supplier.

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- 6.10. By issuing a receipt and signing-off plans that have been submitted or the like, we are not relinquishing our right to make claims for defects and other rights.
- 6.11. If replacement products are supplied, we shall not have to pay any consideration or compensation for the use of the defective goods that were originally delivered.
- 6.12. The Supplier shall bear the cost and risk of returning any defective goods.
- 6.13. Our claims arising from supplier recourse shall also apply if the defective goods have been further processed by us or another entrepreneur.
- 6.14. The Supplier undertakes, for the duration of 10 years from the date of delivery of a machine, to supply technical devices or similar spare parts for these at reasonable prices.
- 7. Packaging**
- The goods must be packaged in accordance with our packaging instructions and in such a way as to prevent damage in transit. Only environmentally friendly packaging materials may be used. Should we, on an exceptional basis, be invoiced separately for packaging, then we shall be entitled to return packaging which is in good condition to the Supplier freight-free, in return for compensation amounting to 2/3 of the corresponding value shown in the invoice.
- 8. Intellectual property rights**
- 8.1. The Supplier guarantees that all deliveries are free of third-party intellectual property rights.
- 8.2. The Contractor shall indemnify us and/or our customers, upon first request and with the Supplier bearing all costs incurred, from all claims that could be asserted by third parties due to a breach of intellectual property rights.
- 9. Product liability, indemnification, liability insurance cover**
- 9.1. The Supplier undertakes to hold us harmless from third-party product liability claims, upon its first request and with the Supplier bearing all costs incurred, if the defectiveness of one of our products has been caused by a product supplied by the Supplier. Furthermore, the Supplier undertakes to refund us any costs arising as a result of this, including the costs of any necessary product recall.
- 9.2. The Supplier undertakes to maintain a product liability insurance policy with a reasonable amount of cover – at least EUR 5,000,000.00 (five million) per incident of injury to persons/damage to property – flat rate. The Supplier hereby assigns to us its claims against the insurance company in the event of damage or loss. We accept this assignment, whereby our insurance benefits for compensation claims in excess of this shall remain unaffected.
- 10. Execution documentation, tools, samples, information, confidentiality**
- 10.1. Samples, manufacturing equipment, tools, profiles, measurement and test devices, materials provided, drawings, work standard sheets, print templates and other documents which the Supplier makes available to us shall remain our property. They may not be used by the Supplier for purposes other than those stipulated in the contract, neither may they be replicated or made available to third parties.
- 10.2. The Supplier is obliged to keep all information it receives from us strictly confidential. This duty of confidentiality shall also remain in force following the execution of this contract; it shall expire if and to the extent that the manufacturing know-how contained in the aforementioned documents which have been made available has become general knowledge. Articles manufactured in accordance with our documents may not be made available, assigned or sold by the Supplier to any third parties.
- 10.3. Moulds, tools, samples, print templates, etc. which are charged to us shall become our property at the time of payment; these shall be kept for us by the Supplier without charge, and shall be surrendered to us upon demand.
- 11. Passing on of orders to third parties**
- The passing on of orders to third parties is not permitted without our written consent. Without prejudice to our other statutory claims, we may withdraw from the contract and/or assert a claim for compensation in place of the performance if we have first granted the Supplier a reasonable period within which to render the performance itself, and this has expired without effect.
- 12. Provisions relating to construction services**
- 12.1. For construction services, the provisions of the German Construction Tendering and Contract Regulations (Vergabe- und Vertragsordnung für Bauleistungen – hereafter abbreviated to VOB) Parts B and C, subject to the changes resulting from Clauses 12.2 to 12.8, shall apply with overriding priority, unless otherwise stipulated in the relevant construction contract. Clauses 1 to 11, 13 and 14 of these Terms and Conditions of Purchase shall merely have supplementary status, i.e. in the event of contradictions, Clause 12 of these Terms and Conditions of Purchase shall take precedence over VOB/B, and VOB/B shall take precedence over Clauses 1 to 11, 13 and 14 of these Terms and Conditions of Purchase.
- 12.2. The limitation period for defect claims shall amount to 5 years from the acceptance of the services in aggregate. This shall apply for all services mentioned in Section 13, Subsection 4 VOB/B. Section 13, Subsection 4, No. 2 VOB/B is excluded.
- 12.3. An entitlement to compensation for work done at hourly rates shall only exist if settlement on the basis of hours worked was agreed in writing with our purchasing department before the work was carried out. The statement of hourly rates, which must be completed on a daily basis, should contain the job titles and full names of the people deployed as well as details of which specific individual services were carried out and the respective materials and time expended. These must be presented to our construction manager for signing on or before the next working day. In other respects, Section 15 VOB/B shall apply.
- 12.4. Construction services must in every case be formally accepted. The utilisation or commissioning of a finished construction service shall not substitute the acceptance and shall not constitute any waiver of the formal acceptance. Partial acceptances pursuant to Section 12 No. 2 VOB/B and fictitious acceptances pursuant to Section 12 No. 5 VOB/B are excluded.
- 12.5. The discontinuance of individual services commissioned by us shall lead to a corresponding reduction of the contract price.
- 12.6. Should the works be interrupted or discontinued for reasons which are beyond our influence (e.g. abandonment of the construction project by the construction clients, effects of the weather), this shall not entitle the Supplier to bring any possible claims against us. Those parts of the performance already rendered shall instead be settled in accordance with contract prices - in the case of flat-rate price agreements - on a pro-rata basis.
- 12.7. We may claim forfeited contractual penalties until the final payment.
- 12.8. Risks shall be borne in accordance with the provisions of the BGB. Section 7 VOB/B is not applicable.
- 13. Export control regulations, right of retention, rescission**
- 13.1. Regulations (EC) No. 2580/2001, (EC) No. 881/2002, (EU) No. 753/2011 and (EU) No. 2016/1686 (so-called anti-terrorism regulations) as well as various country-specific embargo regulations of the European Union prohibit in particular the direct or indirect provision of funds or economic resources (assets of any kind) to natural and legal persons as well as organisations and institutions listed in the annexes to these regulations (so-called EU sanctions lists).
- 13.2. The Supplier shall ensure the implementation of the aforementioned regulations within the scope of its business operations and warrants that it does not maintain any business or other connections with the natural and legal persons, organisations and institutions or other criminal or anti-constitutional organisations on the aforementioned lists.
- 13.3. In the event of reasonable suspicion that the supplier is identical with a natural or legal person, organisation or entity on the EU sanctions lists or provides assets to such natural or legal persons, organisations or entities or is directly or indirectly controlled by them, we reserve the right, taking into account the legitimate interests of the Supplier, to rescind from the contract or to withhold payment until the suspicion has been fully clarified. The Supplier is obliged to provide us on request with all information that we deem necessary to clarify the suspicion or the underlying facts.
- 14. Place of jurisdiction, choice of law, miscellaneous**
- 14.1. Unless otherwise agreed, the place of performance for the deliveries/services provided by the Supplier shall be the place of receipt specified in the order.
- 14.2. If the Supplier is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be Hamburg.
- 14.3. The laws of the Federal Republic of Germany shall apply to the exclusion of the UN Convention of the International Sale of Goods (CISG).
- 14.4. In the event of any of the individual provisions contained within the present Terms and Conditions or any part thereof being or becoming invalid, then this shall not affect the validity of the remaining provisions or remaining part thereof.