



**GENERAL TERMS AND CONDITIONS OF PURCHASE OF CERA SYSTEM Verschleißschutz GmbH, Hermsdorf, Germany**

**1. General**

1.1. Our Terms and Conditions of Purchase apply exclusively; general terms and conditions of the Supplier conflicting with or deviating from our Terms and Conditions of Purchase shall be deemed as binding only to the extent as we have expressly agreed to them in writing. Acceptance or payment of goods and services (hereinafter referred to as "Products") does not constitute our acceptance or confirmation and shall not be construed in any other regard as our approval.

1.2. Any reference made in our Terms and Conditions of Purchase to the INCOTERMS issued by the International Chamber of Commerce shall be deemed to refer to the edition being in force on the date of our order.

**2. Effectiveness of and Amendments to Contracts**

2.1. Orders, agreements and order releases as well as modifications and supplements thereto must be made in writing.

2.2. Oral agreements of any kind – including subsequent modifications and supplements to our Terms and Conditions of Purchase – must be confirmed by our purchasing department in writing and expressly to become effective.

2.3. The written form requirement is also deemed to be met if communications are sent by email or facsimile transmission.

2.4. Cost estimates are binding and are not subject to be compensated unless otherwise expressly agreed.

2.5. Regardless of any measure taken by us requesting the Supplier to accept an order placed with the Supplier we are entitled to revoke an order if the Supplier does not accept the order within two weeks of receipt thereof.

2.6. Order releases within the framework of order and order release planning shall become binding if the Supplier does not object within five working days of receipt thereof.

2.7. The agreements on quality (quality assurance agreement), occupational safety, environmental protection and social responsibility for suppliers as well as our delivery and packaging regulations are an integral part of the contract.

**3. Delivery**

3.1. Performance of delivery in conflict with our agreements and orders are only admissible upon prior written approval of our purchasing department.

3.2. Agreed periods and dates are binding. Punctual compliance with the delivery periods and delivery dates is determined by the date of receipt of the Products by us.

3.3. In addition to the delivery of the Products, the Supplier shall provide us free of charge with all documentation required such as certificates of origin, test certificates, movement certificates, material safety data sheets.

3.4. If the Supplier is responsible for installation or commissioning and unless otherwise agreed, the Supplier shall bear all the necessary incidental costs such as travel expenses, provision of tools and daily allowances.



3.5. Unless agreed to the contrary hereinafter, the statutory provisions shall apply if agreed dates are not met.

3.6. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled due to such delay.

3.7. Partial deliveries are inadmissible in principle unless we expressly agreed to them or can reasonably be expected to accept them.

3.8. The values established by us during the incoming Products inspection shall determine the quantities, weights and measurements subject to the reservation of different values being proved.

3.9. We have the right to use the software, which is a part of the scope of Product delivery including its documentation, to the legally permissible extent (§§ 69a et. seq. of the German Copyright Act [UrhG]). We also have the right to use such software including the documentation with the agreed features and to the extent required for the contractual use of the Product. We may also create backup copies without an express agreement.

#### **4. Force Majeure**

Acts of God, operational disturbances without fault, unrest, governmental measures and other unavoidable events discharge us from our obligation to take over delivery in time for the duration of such event. During such events and for a two-week period thereafter we are entitled – notwithstanding to our other rights – to withdraw from the contract in whole or in part, provided that such events are not of inconsiderable duration and our requirements are considerably reduced as the Products have to be procured elsewhere as a result thereof. The aforementioned provisions apply also in the case of labour disputes.

#### **5. Quotations, Order Confirmations, Invoices, Bills of Sale**

5.1. Any quotation, order confirmation, invoice and bill of sale shall indicate our order no., our position no., our article no. as well as the commodity code (HS Code).

5.2. Invoices and bills of sale must state the bill of sale no. and the gross /net weight.

5.3. Each invoice must meet our requirements, including the indication of an invoice number and other classification features, and must be sent exclusively in electronic form to the email address: [accounting-cera-de@samsongroup.com](mailto:accounting-cera-de@samsongroup.com).

#### **6. Pricing and Passing of Risk**

6.1. The agreed prices are firm and not subject to escalation. They extend to all deliveries and performances required for the fulfillment of the Supplier's obligations.

6.2. Unless agreed otherwise, the prices include transportation and packaging.

6.3. The Supplier bears all risks of loss or damage to the Products until the Products are received by us or by our representative at the location to which the Products are to be delivered in accordance with the contract.



## **7. Payment Terms**

Unless agreed to the contrary, invoices shall be paid either within 14 banking days subject to deduction of a 3 % discount or within 1 month without any deduction. These periods shall commence with effect from the due date of payment and receipt of the invoice and the Products and accompanying documentation (Clause 3.3) or performance of the service. Payment is subject to invoice verification.

## **8. Claims for Defects**

8.1. The statutory provisions applicable to defects as to quality and title incl. the related liabilities for compensation shall apply except provided to the contrary below.

8.2. Acceptance of delivery is subject to the reservation of an examination for faultlessness, in particular also including accuracy and completeness, insofar and as soon as this is pertinent in the ordinary course of business. We will provide notice of any defects found after their discovery as per our ordinary course of business. To this extent the Supplier waives the objection to delayed notification of defects.

8.3. In principle we have the right to select the type of supplementary performance. The Supplier may refuse the type of supplementary performance elected by us if such performance will cause disproportionate costs.

8.4. In the event that the Supplier does not commence rectifying the defect immediately after our remedial request, in urgent cases, especially to ward off acute danger or to prevent increase of damage, we are entitled to undertake such remedial by ourselves or to have it undertaken by a third party at the expense of the Supplier.

8.5. In case of defects of title, the Supplier shall also indemnify us and hold us harmless from any third party claims, unless the reason for the defect has arisen without the Supplier's fault.

8.6. The limitation period for claims based on defects is 3 years – except in cases of fraudulent misrepresentation or a guaranteed characteristic – unless the Products are designated for use in a building construction in accordance with their customary purpose and caused the defectiveness thereof. The limitation period commences when the Products are delivered (passing of risk).

8.7. If the Supplier meets its obligation to effect remedial performance the limitation period shall commence again to a full extent.

8.8. Should we incur expenses as a result of the defective Product, in particular transport, carriage, labour, assembly and disassembly, material costs or costs of incoming Products control exceeding the normal scope of the control, such costs shall be borne by the Supplier.

## **9. Product Liability**

9.1. In the event a product liability claim is asserted against us, the Supplier is obliged to hold us harmless from such claims if and to the extent the damage was caused by a defect in the Product delivered by the Supplier. In cases of liability based on fault, this only applies, however, if the Supplier is at fault. Insofar as the cause of the damage falls within the area of responsibility of the Supplier, the Supplier must prove that it is not at fault.

9.2. If an event described under Clause 9.1 subsists, the Supplier shall bear all costs and expenses, including the costs of any legal proceeding.

9.3. In all other respects the statutory provisions shall apply.



9.4. Prior to any recall action which is partially or wholly due to a defect in a Product, we shall notify the Supplier, give the Supplier the opportunity to collaborate and consult with the Supplier the efficient conduct of the recall action, unless such notification or collaboration is not possible on account of the particular urgency. The costs of the recall action shall be borne by the Supplier insofar as a recall action is due to a defect in a Product delivered by the Supplier.

## **10. Rights of Withdrawal and Termination**

10.1. In addition to the statutory rights of rescission we have the right to terminate the contract and/or any purchase orders with immediate effect if

- the Supplier has stopped supplying its customers, or there is or threatens to be a fundamental deterioration to the financial circumstances of the Supplier and as a result of this the performance of a supply obligation to us is in jeopardy, or
- an interim insolvency administrator is appointed or if insolvency proceedings are applied for or commenced in relation to the assets of the Supplier, or
- the Supplier ceases to make payments.

10.2. We also have the right to withdraw from or terminate the contract if the Supplier files an application for insolvency or comparable debt settlement proceedings to be initiated with respect to its assets.

10.3. If the Supplier has carried out a partial performance of the contract, we only have the right to cancel the whole contract, unless we have no interest in the part performed.

10.4. If we withdraw from or terminate the contract by virtue of the foregoing contractual rescission rights or respective termination rights, then the Supplier must compensate us for the loss or damage incurred as a result, unless the reason for such withdrawal or termination is beyond the Supplier's control.

## **11. Performance of Works on Factory Premises**

Persons who carry out work on our factory premises in fulfillment of the contract must observe the respective plant regulations. The liability for accidents suffered by these persons on our factory premises is excluded except to the extent caused by wilful or gross negligent breach of duty by our legal representatives or persons employed in the performance of our obligations.

## **12. Provision of Goods**

12.1 Goods, patterns, tools, forging dies, castings materials, parts, containers and special packaging, drawings etc. provided by us remain our property. They may only be used as designated and are subject to immediate return to us upon our first demand, in any event when the business relationship ceases to exist.

12.2. The processing of materials and the assembly of parts shall be done for us. It is agreed that we shall be the co-owners of the products manufactured using our materials and parts in the ratio of their value to the value of the entire product, which the supplier shall keep on our behalf.

12.3 In the event the Supplier is in default with the manufacturing of the Products or does not meet its contractual obligations or ceases manufacturing we may request the Supplier to deliver to us all goods, patterns tools, forging dies, castings materials, parts, containers and special packaging, drawings etc. which have been paid fully by us. If such objects have not been paid in



full by us the Supplier may claim a reasonable remuneration. The Supplier shall not destroy the aforementioned objects without our prior written consent.

12.4. The supplier must return to us the models, dies, moulds, tools, drawings etc. provided by us to the supplier, at first request and at the latest at the end of the business relationship.

### **13. Confidentiality**

13.1. The Supplier shall not disclose the execution of the contract and shall not disclose the business relationship for advertising means

13.2. The Supplier shall keep confidential with respect to third parties all business and technical information made available by us (including but not limited to drawings, specifications, or other documents as well as features which may be derived from objects, documents or software provided and any other knowledge or experience) as long and to the extent that it is not proven public knowledge, and it may only be made available to those persons in the Supplier's business facility who necessarily need to be involved in the use thereof for the purpose of performing our order and who are also committed to confidentiality. The information shall remain in our exclusive ownership property. Without our prior written consent, such information must not be disclosed to any other party or person or duplicated or exploited commercially – except for the performance of our order. At our request, all information originating from us (if appropriate also including any copies or records made) and loaned items must be, without undue delay, returned to us in full or destroyed. The obligation of confidentiality shall apply to personal data as well. It has a term of 5 years, such term commencing upon the termination of the Parties' business relationship.

13.3. The statutory protection of our business and trade secrets shall remain unaffected.

13.4. We reserve all the rights to such information (including copyrights and the right to register industrial property rights such as patents, utility models, semi-conductor protection, etc.). Insofar as such was made accessible to us by third parties, this legal reservation also applies in favour of that third party.

13.5. The supplier themselves must not use products that are manufactured according to the documents drafted by us such as drawings, models or similar particulars, or according to our confidential data or with our tools or replicated tools, nor offer or supply such products to third parties.

### **14. Export Control, Customs**

14.1. The Supplier shall inform us on any applicable (re-) export licence requirements for the Products under German, European or US export control law and customs regulations as well as the export control law and customs regulations of the country of origin of the Products. Therefore, at least in his offers, order confirmations and invoices the Supplier shall provide the following information with respect to the Products:

- export list number (Ausfuhrlistennummer) pursuant to Annex AL to the German Foreign Trade and Payments Regulation (Außenwirtschaftsverordnung) or any comparable export list information of applicable export lists;
- ECCN (Export Control Classification Number) for US-goods (including technology and software) pursuant to the US Export Administration Regulations (EAR);



- country of origin of the Products and of the components thereof, including technology and software;
- any transport of the Products through USA, manufacture or stocking of the Products in the USA and whether the Products have been manufactured by using US technology;
- a contact person in its organization to provide further information to us upon request.

14.2. Upon our request the Supplier shall provide any other foreign trade data with respect to the Products and their components in written form and the Supplier shall inform us on all changes to such data without undue delay and prior to delivery.

## **15. Compliance**

15.1. The supplier undertakes to comply with the relevant statutory regulations for handling employees, environmental protection, and occupational safety and to work on reducing the adverse effects of their activities on people and environment. To this end, the supplier shall, within its capabilities, set up and develop a management system according to ISO 14001. Furthermore, the supplier shall observe the principles of the UN's Global Compact Initiative. These principles essentially pertain to the protection of international human rights, the right to collective negotiations, abolition of forced labour and child labour, elimination of discrimination in recruitment and employment, responsibility towards the environment, and prevention of corruption. You can find more information about the UN's Global Compact Initiative at [www.unglobalcompact.org](http://www.unglobalcompact.org).

15.2. In the event that a supplier repeatedly and/or despite a corresponding advice performs illegal actions, and does not prove that the violation of law was remedied as much as possible and appropriate arrangements were made to avoid violations of law in the future, we reserve the right to withdraw from the existing contracts or terminate them without a notice period.

## **16. Energy-related procurement criteria**

As a part of the decision-making process for contract award, the tenders will be evaluated with respect to energy efficiency criteria, which also play a part in the decision on the award of contract.

## **17. REACH, RoHS, WEEE, Ionizing Radiation**

### **17.1. REACH**

All delivered Products must comply with the requirements applicable from time to time pursuant to the REACH Regulation (1907/2006) as amended from time to time. The Supplier shall notify us immediately and shall consult with us on the appropriate measures to be taken in the event the Products or their availability for shipment or their purpose of use or their quality are subject to modification as far as such modifications are associated with statutory provisions, in particular with regard to the REACH Regulation. The same shall apply if the Supplier identifies or to the best of its knowledge should have identified that such modifications could occur. There is no obligation for our customers (ultimate users) to conduct a (pre-) registration.

### **17.2 RoHS**

The Supplier warrants that the Products are delivered in conformity with the RoHS Directive, as amended from time to time.



### 17.3 Ionizing Radiation

The supplier guarantees that all deliveries are free of ionizing radiation. The threshold and limit values for natural background radiation are valid as confirmation of free ionizing radiation.

## 18. Miscellaneous

18.1. The place of performance is the place to which the Products are to be delivered in accordance with the contract or where the service is to be rendered.

18.2. Always subject to our prior written approval, the Supplier may sub-contract its obligations or parts thereof to a third party.

18.3. If one of the provisions of these Terms and Conditions should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The parties hereto are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.

18.4. The contractual relationships shall be governed and construed in accordance with the UN Convention on Contracts for the International Sale of Goods (hereinafter referred to as "CISG"), and to the extent that the respective issue is not covered by the CISG, by reference to the substantive laws of Switzerland.

18.5. The venue for all legal disputes arising either directly or indirectly out of contractual relationships based on these Terms and Conditions of Purchase shall be Frankfurt am Main, Germany. We further have the right to take legal action against the Supplier at a court with jurisdiction over the registered office or branch office of the Supplier or at the court with jurisdiction over the place of performance at our discretion.