

**Purchasing Conditions SELZER Fertigungstechnik GmbH & Co. KG**  
**(called "SELZER" in the following)**  
version updated: May 2008

### **1. Authoritative Conditions**

1.1 All legal relations between supplier and SELZER shall be governed by these conditions. Changes and amendments are only valid if they have been confirmed by SELZER in writing. Any other (general) conditions shall also then be invalid if SELZER has not expressly rejected them and/or if the supplier has accepted them without objections.

1.2 These purchasing conditions shall be valid until further notice also for any future business dealings with the supplier.

### **2. Orders**

2.1 Supply agreements (order and acceptance) and forecast delivery schedule agreements as well as changes and amendments must be made in writing. Orders of a forecast delivery schedule agreement can also be effected via electronic data transmission.

2.2 If the supplier does not accept the order within two weeks after receipt, then SELZER shall be entitled to withdraw the order. The supplier's offers shall be considered firm and binding for a period of six months.

Forecast delivery orders shall be firm and binding at the latest if the supplier does not reject the order within five working days after receipt.

2.3 The supplier is obliged to point out any possible defective conditions of the goods or possible problems with the goods already on submission of the offer or at the latest when such a condition come to their knowledge. This applies particularly to all knowledge and information of the supplier about the state of the art of science research and technology for the purpose and viability of the order as well as environmental regulations.

2.4 Any deviation from the conditions set out in the order shall only be valid if the supplier points them out expressly and if they have been confirmed by SELZER in writing. The written confirmation by SELZER shall also then be necessary if supplementary or deviating (additional or reduced) services have been demanded by employees of SELZER during the execution of the order.

2.5 SELZER is entitled to demand changes in design and the execution of the order items even after the closing of the contract insofar as this means reasonable efforts on the part of the supplier. In doing so, the effects are to be adequately considered, with regard to extra or reduced cost as well as delivery times in particular.

### **3. Production documentation**

3.1 Models, testing devices, tools, specially designed machines, molds/templates, samples, drafts, plans, projects, drawings, computer programs and further means of production and documents that have been furnished to the supplier or made according to SELZER's specifications shall remain property of SELZER and must not be copied, made available to any third party and/or used for any purpose other than the execution of the order. They are the intellectual property of SELZER and must be handed over to SELZER on the supplier's initiative after completion of the order. Any copies of computer programmes the supplier made for their use must be deleted.

3.2 Documents and auxiliary means furnished by SELZER must be checked for suitability by the supplier on their own initiative and responsibility.

3.3 The stipulations and conditions above shall also apply for any items that have been furnished to the supplier to be processed by a subcontractor. The supplier shall also be held liable for any damage, deterioration, destruction and loss, if the aforesaid has been caused not by the supplier themselves but his agents or subcontractors. In addition, the supplier has to mark all means of production, documents, tools etc clearly as property of SELZER.

3.4 Drawings and general sketches must be provided to SELZER free of charge of all plants, machines, machine parts and tools which are prone to wear and which are not regular equipment. SELZER or their agents are thus entitled to use these documents for the production of spare parts, making changes to delivered items or similar.

### **4. Confidentiality**

4.1 The supplier undertakes to treat as trade secret all non-public commercial or technical information that comes to his knowledge due to the business relation with SELZER. Subcontractors of the supplier must be committed to act in the same way.

4.2 This commitment to confidentiality shall remain valid also after completion of the supply agreement.

4.3 The supplier must only use the fact of their business relationship for advertising purposes after receipt of a written approval by SELZER.

### **5. Protective rights**

5.1. The supplier shall be held liable for any claims resulting from the contractually agreed use of the supplied items that are lodged on the grounds of infringement of patent rights or patents pending

that have been registered by any third party (protective rights) of at least one of which said protective rights has been published either in the home country of the supplier, or by the European Patent Office or in one of the following states: Federal Republic of Germany, France, Great-Britain, Austria or the USA.

5.2. The supplier shall indemnify SELZER and their customers against liability for any claims of any third parties on the grounds of the use of such protective rights.

5.4 The contract partner undertake to inform each other immediately of any risk of possible injuries to people and reported cases of injuries to people and help each other settle any claims arising from such matters by mutual consent.

5.5. The supplier shall inform SELZER on request about the use published or unpublished licences pertaining to the delivery items.

## **6. Quality and documentation**

6.1 The supplier has to comply with all technical specifications, all generally accepted technical rules and safety regulations. The same holds true for any additional quality assurance regulation or additional quality assurance agreements concluded with SELZER. If type and scope of the test and the testing means and methods have not been specified and agreed on between SELZER and the supplier, then SELZER shall, on request, be willing to discuss the tests with the supplier with regard to know-how, experience and possibilities in order to determine the correspondingly required state of the art of testing.

Standard specifications given concerning technical data do not release the supplier from the obligation to deliver items free from defect and complying with the contract and specified functions.

6.2 In addition, for the safety parts marked with special identifying terms or labels in the technical documentation or for any such marking due to additional agreements (e.g. „DmbA“ according to VDA, volume 1 in its applicable version for automobile parts), the supplier has to put on record in separate documentation when, in what way and by whom the delivery items were tested with regard to the features and characteristics the supplier is required to document and what the results of the required quality tests were. The documentation of the tests has to be stored for fifteen years and is to be submitted to SELZER on request. Subcontractors of the supplier have to be committed by the supplier in the same way within the scope of legal possibilities.

6.3 The supplier has to check the quality constantly and, if applicable, to inform SELZER about ways to improve the quality.

6.4 Type and scope of quality checks have to be agreed on by the contract partners. It is assumed

that quality tests customary to industry and specific to the production process are carried out.

## **7. Prices**

If not otherwise expressly agreed in writing, the contractually agreed prices are fixed net prices and exclude any additional demand. Price reserves of the supplier are excluded with the exception of the statutory value-added tax.

Additional costs, fees, taxes, duties and other charges with the exception of value-added tax which become due after placing the order shall be borne by the supplier.

## **8. Invoicing and payment**

8.1 If no other agreements have been made with the supplier, separate invoices are to be handed in for each order in duplicate with the copies marked as such. Invoices must contain the following data provided by SELZER: Order No., Items, and Article/Material Specification as well as Article Nos. Invoices are to be handed in separately. i.e. separate from the delivery of the goods.

8.2 Should the amounts stated in the invoice deviate from those reported from the incoming goods dept. of SELZER, the latter shall be decisive for any payments due.

8.3 Faulty delivery entitles SELZER to hold back a proportion of the payment until the delivery has been duly performed. Payments by SELZER do not mean a waiver of any claim or right resulting from misperformance.

8.4 If not otherwise agreed, payment shall be effected on the 25th day of the month following the delivery at an early settlement discount of 3%, provided the proper invoice has been received by the 10th day of the month.

8.5 SELZER is entitled to offset invoices against payments due to associated companies of SELZER.

8.6 The supplier is not entitled without prior written consent by SELZER, which must not be denied unreasonably, to cede its debt claims against SELZER or to have them collected by third parties. In the event of an extended reservation of proprietary rights, it is taken as agreed.

If, contrary to the above-mentioned stipulation, the supplier cedes his debt claim against SELZER to a third party, the cession shall be valid nonetheless. SELZER can, however, meet the claim with discharging effect by payment or payment surrogate (offsetting) to the supplier or the third party at their discretion.

## **9. Delivery dates, delays in delivery, force majeure**

9.1 The delivery dates and deadlines agreed on are binding. The receipt of goods at the delivery

address named by SELZER and the acceptance made in time shall be decisive for the fulfillment of the delivery date or the delivery deadline.

Consignments in parts will only be accepted after express agreement.

9.2 Force majeure and industrial action discharge the contract partners from performance until the end of such disturbance. Both partners undertake to a reasonable extent to give the necessary information immediately and to adapt their performance obligation to the changed situation in good faith.

SELZER is fully or in part discharged of its obligation to accept the goods/services ordered and entitled to withdraw from the contract if the delivery/service can not be made use of due to the delays caused by force majeure or industrial action, also with respect to commercial aspects.

9.3 If it can be foreseen that a date agreed on can not be met independent of the causes of the delay, the supplier has to inform SELZER immediately in writing giving the reasons and indicating the expected length of the delay. Should the supplier fail to report the delay to SELZER in time, the supplier loses any right to refer to the reason for the delay for any claim.

The supplier can only refer to the non-performance of delivery of documentation on the part of SELZER if such documents have been requested in writing allowing for an adequate period of time for delivery during which he has not received the documentation.

9.4 The supplier is obliged to compensate for any damage caused by delay including the substitution of lost profits and cost of interruption of business at SELZER or their final customer as well as other remote consequences. In addition, the supplier is obliged to pay for the damage caused by the delay in the production chain of SELZER's customers if SELZER on their part are obliged to its customers to pay such costs.

Having set a renewed deadline that is not met again, SELZER is entitled to withdraw from the contract; apart from the costs of the damage caused by the delay, the supplier shall then also be obliged to pay damages for non-fulfillment including the personnel costs at the hourly rates valid at SELZER.

9.5 The acceptance without reserves of delayed deliveries/services does not mean a waiver of the entitlements against the supplier that arise from such a delay.

## **10. Dispatch regulation**

10.1 The processing of the dispatch including the delivery address depends on the respective provisions in the order. If not otherwise agreed the goods are delivered free of charge to the delivery address named, DDP (Incoterms 2000) including

customary packaging, transport, customs declarations and procedures and duties paid.

10.2 The supplier shall be held responsible by SELZER for the proper marking of the consignment and complete and correct details in the order confirmation and the dispatch documents.

On the day of dispatch of the goods, the supplier has to send the dispatch note of every consignment in duplicate stating the order number, exact content with no. of pieces, dimensions and weight etc. It has to be sent in time so that SELZER receives it before the goods.

10.3 If the goods are delivered earlier than agreed, SELZER reserves the right to send the goods back at the supplier's expenses and or to store the goods at the supplier's expenses and risk until the delivery date. Furthermore, in case of a delivery earlier than agreed, SELZER reserves the right to make payments only on the date due.

10.4 The goods are dispatched at the risk of the supplier

The risk of deterioration and destruction remains with the supplier until the goods have been received at the delivery address given.

## **11. Fulfillment of the contract, liability, recourse**

11.1 The liability including the warranty of quality depends on the legal requirements if not otherwise agreed or provided for in these general conditions of sale.

11.2 Any rejection of a claim on the grounds that a claim in respect of a defect was late is excluded. The supplier expressly releases his claim for a quality inspection of incoming goods at SELZER.

11.3 If defective parts are delivered, the supplier shall have to bear the costs of sorting, the costs of assembly and disassembly if assembly had already begun as well as the transport of the defective goods back to the supplier including the personnel costs that have arisen at the hourly rates applied at SELZER. In addition, the supplier is obliged to pay for all costs arising later in the production chain of SELZER's customers if SELZER on their part are obliged to its customers to pay such costs.

11.4 In urgent cases, SELZER shall be entitled to have the defective parts repaired or replaced and the damage removed at the expense of and without participation of the supplier. With replacement or removal of defects the statute of limitation for claims in respect of defective goods shall be renewed for the respective parts.

11.5 If SELZER should be held liable for the violation of any administrative safety or security regulation or on any other legal grounds arising from inland or foreign legal requirements or for reasons resulting from the contractual agreements, in particular because of measures to avert dangers (e.g. product recall costs), SELZER shall be entitled to

demand from the supplier the compensation of the costs arisen at SELZER adhering to the principles of good faith and adhering to the provisions of the law applicable with SELZER (liability principle) if the supplier's deliveries or their performance were defective and led to the damage. This is invalid if the supplier renders proof that the damage was inevitable or unpredictable.

In such cases of recourse claims. SELZER shall inform the supplier in time about the claims raised and the measures taken by SELZER.

11.6 If SELZER is held responsible on grounds of liability independent of the question of fault, the supplier shall act towards SELZER to a degree to which they would act if they were directly liable.

For the compensation of damage between SELZER and the supplier, the provision of Art. 254 BGB (Civil Code of Germany) shall apply correspondingly.

11.7 The claims of SELZER according to these provisions under subsection 11 will be statute-barred after a period of 4 years as of the date of start-up the vehicle, if no different limitation has been agreed or a longer limitation period results from the statutory limitations.

11.8 Recourse claims on the part of SELZER against the supplier according to Art. 478, 479 BGB (Civil Code of Germany) remain unaffected; SELZER can also make such claims if the final customer is not a consumer but a corporation.

11.9 By confirming the receipt of delivered goods or by accepting/endorsing submitted drawing, SELZER does not waive any contractual or statutory rights.

11.10 The supplier undertakes to take out a producer's liability insurance with a coverage for product recall costs for the complete duration of the contractual business relationship with SELZER. It must cover a minimum amount of 10.000.000 Euro (ten million) and prove of it must be submitted to SELZER on request.

## **12. Place of performance and court of jurisdiction**

12.1 Place of performance for the delivery and payment obligations shall be Driedorf-Roth (at the SELZER factory). The court of jurisdiction shall be Herborn, Germany. SELZER can also institute legal action at the supplier's general court of jurisdiction.

12.2 If SELZER or an associated company abroad should be sued by a third party on the grounds of a product defect for damages for injury to a person or material damage, then SELZER has the right at its discretion to initiate the necessary procedural steps at the respective court abroad in order to assert claims of release or recourse against the contractor.

## **13. Disruption of the contractual relations**

13.1 Should the supplier stop their payments or should insolvency procedures concerning their assets or a settlement out of court be filed, then SELZER is entitled to withdraw partially or fully from the contract. If the withdrawal from the contract is declared because of a breach of the contract on the part of the supplier, all performance rendered or goods delivered up to this point of time shall only be compensated for to the extent they can or could be used by SELZER for the intended purposes. The damage suffered by SELZER shall be taken into consideration for the calculation.

13.2 If the supplier's legal form, management, share quota or financial status changes significantly so that the results SELZER could expect from the performance of the contract, SELZER is entitled to withdraw from the contract without having to pay any costs.

13.3 If the supplier's share quota change, the contract partners will on request take up negotiations about the continuation of the order.

## **14. Separability clause**

Should individual provisions or part of provision of this supply contract or these purchasing conditions be invalid or impracticable or are rendered invalid or partially invalid by court or administrative decisions, then the validity or the practicability of all other provisions shall remain unaffected. The invalid or impracticable provision shall be replaced by one that is valid, practicable and comes closest in meaning to the economic purposes of the contract partners.

## **15. Miscellaneous**

15.1 The supplier is not entitled to subcontract the order or parts of the order to third parties without prior written consent by SELZER.

15.2 Personal data that are obtained in the context of the contractual relations will be saved for the purposes of data processing (Art. 26 Federal Data Protection Law of Germany).

## **16. Language of the contract, applicable law**

16.1 The language of the contract is German. If the contract partners use another language apart from German, the contents in German language shall have priority.

16.2 The substantive and procedural laws of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, and the German International Private Law is excluded.