

**1. Scope**

These general conditions of purchase, exclusively, apply to the entirety of the relationships of SHW Casting Technologies (SHW-CT) with any supplier that is a contractor to the procurement of tangible goods (supplies) and services or work performances (services). They apply, furthermore, to all the supplier's future supplies and services. Should the supplier use conflicting, divergent or supplementary general terms and conditions of business then their applicability is ruled out even if SHW-CT has not expressly contradicted them.

**2. Contract formation, performance**

(1) The supplier is obliged to accept orders within a period of two weeks. A call-off by SHW-CT under a multi-delivery contract is legally binding unless the supplier opposes the call-off within one week of receiving notification of it.

(2) SHW-CT has the right to monitor the manufacture of supplies or the provision of services during normal business hours after having given notice of its intention to do so.

**3. Delivery conditions** (Deadlines, delays, retention of ownership)

(1) The deadlines agreed for deliveries and performances shall apply. The arrival of goods at the purchaser's premises is relevant for compliance with supply deadlines or delivery periods. In sales shipment cases the supplier must have the goods ready in good time, taking into consideration the normal time required for loading and despatch and possible normal delays in transportation.

(2) The supplier must inform SHW-CT immediately and in writing of all circumstances that might adversely affect timely delivery or performance immediately such circumstances are identified and advise it of the probable duration of the interference.

(3) Unless something else has been agreed delivery must be free to whatever SHW-CT delivery address has been detailed. Unless something else has been agreed SHW-CT's registered office is the place of fulfilment.

(4) In the event of delay in delivery SHW-CT has the right to demand a contract penalty at the rate of 0.5% of the net delivery value per completed week, but not of more than 5% of the total net delivery value. It has the right to assert a contract penalty in addition to the fulfilment. The contracting parties are at liberty to prove that a smaller or larger loss has arisen or indeed that there has been no damage at all to the other party.

(5) Any extended or enlarged right of retention on the part of the supplier is ruled out.

**4. Passage of risk, acceptance**

(1) Unless something else has been agreed risk passes over when the delivery (on free delivery terms) arrives. In the case of deliveries involving installation or assembly and in the case of services risk passes over on acceptance, but if neither installation nor assembly is involved in deliveries it passes over on their arrival at the delivery address nominated by SHW-CT.

(2) Unless something else has been agreed the acceptance of work performances takes place at the delivery or service address and requires SHW-CT to issue a written certificate to that effect. An implied or notional acceptance is ruled out.

**5. Prices, payment conditions**

(1) Unless something different has been agreed the agreed price is a fixed price that includes packaging, delivery, insurance, other ancillary costs and taxes.

(2) Unless something else has been agreed, payment of invoice amounts is, at SHW-CT's option, within 14 days with 3% cash discount or within 30 days net. These periods of time allowed begin with the day on which the invoice arrives at SHW-CT but not before the goods have actually been delivered or the services actually provided.

(3) SHW-CT is entitled to assert the statutory rights of set-off and lien.

(4) Set-off by the supplier against claims that are contested by SHW-CT or have not been established with legal force is ruled out.

(5) The supplier only has the authority to assert a right of retention to the extent that the counter claims are uncontested, legally valid or have been recognised by SHW-CT. This does not apply if the counter claims are based on the same contractual relationship.

**6. Liability for defects, barring by time, duty to investigate, warranty holdback**

(1) The supplier shall supply/provide the goods and/or services free of material and legal defects and in line with the state of the technology and with the safety requirements applicable. Should the supplier have to deviate from the state of the technology and from the safety requirements applicable because of an instruction from SHW-CT then it must inform the latter of that immediately.

(2) SHW-CT must investigate goods received immediately for possible faults or quality deviations. It must notify obvious defects within 4 days of the delivery, while concealed faults must be notified within 10 days of their discovery.

(3) SHW-CT's defect claims shall be guided by the statutory provisions.

(4) SHW-CT's defect claims for supplies and services shall be barred by time in five years providing they are destined for integration into an edifice in line with their normal use, otherwise in 36 months, beginning when risk passes over.

(5) SHW-CT has the right to demand a surety holdback of 5% of the net order total for defect claims. The supplier has the right to supplant the surety holdback by forming a warranty bond that is unrestricted in time, directly enforceable and subject to German law with a bank that is licensed within the European Union. Collateral is ruled out. The surety holdback and/or the bond formed to supplant it must be paid out and/or given back on written demand after the warranty period has expired.

**7. Secrecy**

(1) Drawings, plans, models, samples, tools and similar items in which SHW-CT has copyrights and rights of ownership that have been handed over must not be made accessible to third parties, disseminated or utilised for purposes other than those defined by SHW-CT without its explicit written consent.

(2) The supplier commits itself to treat all items of SHW-CT information that become known to it as a result of the business relationship as business secrets, not to make them accessible to third parties and to protect them from such access. This duty to preserve confidentiality shall not apply if the items of information have become publicly known or were already known to the supplier at the time of entering into the contract without any breach of contract on the part of the supplier having been instrumental in that.

(3) Order-related production materials that are manufactured by the supplier or are procured principally at SHW-CT's cost pass, on payment for them, into its ownership. The supplier stores the production materials for SHW-CT. They must be used exclusively for the purposes of the contract. The supplier shall immediately inform SHW-CT of all not only inconsiderable damage to production materials and semi-finished goods.

(4) Contract partners may only mention their business relationship with SHW-CT in advertising with the latter's prior consent.

**8. Force majeure, instructions, liability, product liability, infringements of industrial property rights**

(1) Instances of force majeure such as civil unrest, war and other wholly unforeseeable, unavoidable and extraordinary occurrences release the contract partner for the duration of the interruption and to the extent of its effect on the partner's duties to perform. Within the limits of what is reasonable the contract

partners are obliged to provide the information necessary immediately and to adjust their obligations to the changed circumstances in good faith.

(2) Persons who are subject to the supplier's right to issue instructions and who carry out work in fulfilment of the contract on the premises of SHW-CT or its customers must heed the provisions of the factory regulations concerned.

(3) The supplier is liable in accordance with the provisions of the law.

(4) Insofar as the supplier must be responsible for any product liability damage it is obliged to reimburse SHW-CT for the losses arising from that and/or indemnify it from third party claims for compensation in damages in this respect. The supplier's duty to indemnify refers to all expenditure that necessarily accumulates for SHW-CT from or in connection with third party recourse to the latter.

(5) Within the scope of its above-mentioned liability for instances of damage or loss the supplier is also obliged to reimburse any items of expenditure under §§ 683, 670 or §§ 830, 840, 426 of the German Civil Code that result from or in connection with a recall campaign conducted by SHW-CT, which shall advise the supplier – insofar as possible and reasonable for it to do so – of the content and extent of the recall measures to be undertaken and give it an opportunity to comment thereon.

(6) The supplier is obliged to insure itself against the risks associated with its product liability for the goods it delivers to an appropriate extent and, if so requested, to provide SHW-CT with evidence of the insurance cover in an appropriate form.

(7) Insofar as the supplier has to answer for any infringement of third party industrial property rights or patent applications that results when its goods are used or its services taken advantage of as contractually provided for then it is liable and shall indemnify SHW-CT against all third party claims arising from the infringement of such third party rights.

(8) The contract partners commit themselves to advise each other immediately and reciprocally after the risks of infringement have become known and to advise each other of any supposed infringements of industrial property rights.

**9. Assignment, execution of works, making materials available, spare parts**

(1) SHW-CT's prior consent is required for assignment of the rights and claims resulting from the order.

(2) Materials made available remain SHW-CT's property and shall be separately stored, marked and administered at no cost with the care that the supplier usually applies to its own business affairs. They may only be used to fulfil orders placed by SHW-CT.

(3) The supplier undertakes the processing or conversion of the materials made available for SHW-CT. If goods that are subject to reservation of ownership are processed with other goods that do not belong to SHW-CT then SHW-CT acquires co-ownership of the new item(s) in the ratio that the value of SHW-CT's goods bears to the items being processed at the time of the processing.

(4) The supplier commits itself to holding available spare parts for an appropriate period of time that corresponds to the normal working life of the products that have been delivered. The commitment to holding spare parts shall be for at least 5 years from the delivery of the last product.

**10. General provisions**

(1) Invalidity of individual provisions of these general conditions of purchase shall not affect the validity of the other provisions.

(2) It is intended that amendments and supplements to these general purchasing conditions be made in writing. Any oral agreement must be put in writing.

(3) The law of the Republic of Germany applies to the entirety of the business relationships between the contracting parties; if the supplier's registered office is outside the Republic of Germany this shall apply to the exclusions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(4) SHW-CT's registered office in 73433 Aalen-Wasseraffingen is the jurisdiction for all legal disputes in connection with the contract/supply transaction and indeed also for legal actions arising in the processing of cheques and bills of exchange. SHW-CT does, however, have the right also to take legal action against the supplier in any other justified jurisdiction.