

# General Terms of Purchase of ANDRITZ Schuler Pressen GmbH and Gräbener Pressensysteme GmbH & Co. KG

## § 1 General information - scope

- (1) These Terms of Purchase shall apply exclusively to our entire business transactions with suppliers or other contractors (hereinafter jointly referred to as "Suppliers"). We hereby object to sales and delivery terms as well as other business terms of the Supplier. They shall not be applied. This shall also apply insofar as the sales and delivery terms or other business terms of the Supplier feature contents in the regulations, which go beyond the regulation contents of these Terms of Purchase. Our Terms of Purchase shall also apply if we accept the delivery or service of the Supplier without reservation with the knowledge of contradictory terms of the Supplier or terms of the Supplier which deviate from our Terms of Purchase.
- (2) All agreements, which are reached between us and the Supplier for the purpose of executing this contract, are to be recorded in writing in this contract.
- (3) Our Terms of Purchase shall only apply towards entrepreneurs according to § 310 Par. 1 BGB [German Civil Code].
- (4) Our Terms of Purchase shall also apply to all future business with the Supplier. We are entitled to change these Terms of Purchase with effect for the future whole business relationship with the Supplier after a corresponding notification. The notification will be given in writing. If the Supplier does not object to the changes reported in the notification within 6 weeks after receipt of the notification by it then the modified Terms of Purchase shall be deemed as recognised by the Supplier. We will inform the Supplier of this legal consequence in our notification.
- (5) If a framework agreement exists between the Supplier and us these Terms of Purchase shall apply both to this framework agreement as well as to the individual orders insofar as not otherwise agreed in the corresponding framework agreement.
- (6) Should one of the provisions of these Terms of Purchase be or become invalid this shall have no effect on the validity of the contract on the whole. The statutory regulation shall then apply instead of the invalid provision. In no way shall the invalid provision be replaced by business terms of the Supplier.

## § 2 Order – order documents

- (1) An order shall only be deemed as placed if it has been prepared by us in writing (also by telex or by e-mail). Oral orders or orders by telephone are only binding for us if we subsequently confirm these in writing within the meaning of Sentence 1. Enquiries on our part are without obligation and non-binding for the executed conclusion of the contract.
- (2) The Supplier undertakes to accept our order within a period of 2 weeks.
- (3) With the acceptance of the order the Supplier acknowledges that it has informed itself by inspecting the available documents of the type of the execution and scope of the service. No obligation exists for us in case of obvious errors, typing and calculating mistakes in the documents submitted by us, etc. The Supplier undertakes to inform us of such errors so that our order can be corrected correspondingly. This shall apply accordingly in the event of the absence of documents.
- (4) We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents. They may not be made accessible to third parties without our explicit written consent. They are to be exclusively used for the produc-

tion based on our order. They are to be returned to us without request after the order has been processed. They are to be kept secret towards third parties, the regulation in § 11 shall insofar additionally apply.

- (5) With the acceptance of the order the Supplier acknowledges the regulations for third party companies concerning the conduct on our business site or in our rooms, which it must access in order to carry out the order. When entering our business site or our rooms the Supplier will sign corresponding guidelines in case such exist for the corresponding business site or the corresponding rooms.

## § 3 Prices - invoices – terms of payment - assignment

- (6) The price shown in the order is binding. All prices are understood as net prices plus the applicable rate of value added tax. Other secondary costs such as customs duties, insurance premiums and similar charges shall be for the account of the Supplier.
- (7) In the absence of a deviating written agreement the price delivery "free house", also includes the packaging. Insofar as owing to a deviating written agreement we have to bear the shipping costs as an exception the Supplier has to choose the mode of shipment stipulated by us, alternatively the mode which is most reasonable for us. Insofar as owing to a deviating written agreement we have to bear the packaging costs as an exception, the packaging costs are to be charged at the cost price whereby the Supplier has to choose the packaging type stipulated by us and to pay attention that the goods are protected against damages by the packaging.
- (8) We can only process invoices if these – in line with the stipulations in our order – state the ANDRITZ Schuler order number shown therein; the Supplier is responsible for all consequences occurring owing to the non-compliance with this obligation if it does not prove that it was not responsible for this. Incidentally the invoices must comply with the stipulations of the Value Added Tax Act.
- (9) We shall pay, provided that not otherwise agreed in writing and provided that these are not opposed by any rights on our part, the purchase price by 30 days net with 3 % cash discount or net within 60 days after delivery and proper invoicing. Decisive for the start of the cash discount deadline is the receipt of the corresponding invoice by us. Invoices, which do not contain the details included under § 3 Par. (3) and/or false invoice amounts shall only be deemed as received by us after receipt of a corrected invoice.
- (10) If the provision of a work service is the object of this contract the acceptance shall replace the delivery.
- (11) We are entitled to rights to offset and of retention in the statutory scope.
- (12) The assignment of claims of the Supplier from the contractual relationship with us is not permitted without our prior written consent. For the event that the Supplier has assigned a counter-claim against us to a third party we are entitled to pay to the Supplier with discharging effect against the third party.

## § 4 Delivery dates

- (1) The delivery date stated in the order is binding.
- (2) We have no obligation to accept the goods before expiry of the delivery date. In case of premature delivery we are enti-



# General Terms of Purchase of ANDRITZ Schuler Pressen GmbH and Gräbener Pressensysteme GmbH & Co. KG

tled at our choice and at the costs of the Supplier to return the goods or to store these at its costs and risk.

- (3) The Supplier undertakes to inform us immediately in writing if circumstances occur or become known to it, from which it can be derived that the agreed delivery date cannot be observed.
- (4) If the Supplier is delayed with the delivery for reasons, for which it is responsible, we are entitled, to charge the Supplier a conventional penalty in the amount of 0.1 % of the contractually agreed price, a maximum of 5 % of the order value (without value added tax) per calendar day of the delay. Further claims for damages on our part remain unaffected. An offsetting of the Supplier against a forfeited conventional penalty is only permitted with counter-claims which have been declared final and binding or recognised counter-claims. We are entitled to assert the conventional penalty until the payment to the Supplier for the delivery affected by the delay. Insofar as we have agreed interim dates with our Suppliers, we would like to make clear that the conventional penalty always only refers to the contractually agreed final delivery time. The completion time can also be deemed as delivery time insofar as there is a contract for work and services.
- (5) The right is reserved to further statutory claims such as cancellation or damages instead of the service.

## § 5 Passing of risk - documents

- (1) The delivery has, insofar as not otherwise agreed in writing, to be carried out "free house".
- (2) The risk shall pass – even with agreed delivery ex works or shipment at our costs – with the arrival of the delivery in our company or the place of delivery stipulated by us.
- (3) The following documents have to be enclosed with the delivery of drawing parts: Original drawings, order specifications or BOMs. Otherwise the delivery shall be deemed as not complete. Corresponding copies are to be enclosed with multiple deliveries of the same parts.
- (4) The Supplier undertakes to exactly state our order number, our order position, the parts designation, the ident. number as well as our order number on all shipping documents and delivery notes; if it fails to do this we shall not be responsible for delays in the processing.

## § 6 Inspection of defects - guarantee – liability for defects quality assurance – REACH

- (1) We undertake to inspect the goods within a reasonable period of time for possible deviations in quality and quantity; the complaint is deemed in time provided that it is received by the Supplier within a period of 7 calendar days beginning from the receipt of the goods or in case of hidden defects from the time when they are discovered.
- (2) The goods which are to be delivered must be free of faults, comply with the specifications stipulated by us, be developed and produced according to state-of-the-art technology and be usable for the use presumed as per contract to an unlimited extent as well as comply with the relevant statutory and official protection regulations which are applicable in the Federal Republic of Germany.
- (3) We are entitled to the statutory claims for defects. In any

case we are entitled to request remedy of the defects or delivery of a new object from the Supplier at our choice. The right is explicitly reserved to damages, in particular that to damages instead of the service.

- (4) We are entitled to carry out the remedy of the defects ourselves at the costs of the Supplier if there is danger in delay or a special need for urgency.
- (5) The statute-of-limitations for defects of quality and title is 3 years. It shall begin with the delivery of the goods respectively with the acceptance of the service/goods by us. The statute-of-limitations for software installation service and the preparation of expert's opinions is 4 years. It shall begin with the expiry of the year with which the delivery/acceptance has been carried out. The statute-of-limitations for spare parts, which are ordered at the same time at the main object and are described as spare parts in the contract, shall begin with the proper storage of the spare parts with commissioning of the spare parts. It shall end by no later than 3 years after delivery of the main object respectively receipt of the spare parts provided that these have not been delivered together with the main object. For subsequently improved or newly delivered parts of the Supplier the statute-of-limitations shall begin with the termination of the subsequent improvement or the executed new delivery.
- (6) If the order includes the production of cast pieces then the following shall apply in addition: Before the moulding the Supplier shall examine the correspondence of model and drawing as well as the ability to carry it out using casting technology and will guarantee this. A subsequent objection of a faulty construction is excluded.
- (7) The Supplier undertakes to document the constant quality assurance by suitable inspections and control, in particular before the outgoing goods. It has to document these inspections and controls. We are entitled to convince ourselves of the type of the quality assurance on site, if applicable also at sub-suppliers. In addition, we explicitly reserve the right to conclude a quality assurance agreement with the Supplier.
- (8) The Supplier undertakes to only supply us goods which satisfy all requirements of the EU regulations (EC) 1907/2006 ("REACH") and (EC) 1272/2008 ("CLP regulations"). These obligations in particular include the registration and information obligations under REACH as well as the obligation for classification, marking and packaging of the CLP regulations. The Supplier shall make the necessary safety data sheets for substances and mixtures available to us free of charge upon request in order to determine the suitability of the materials. The Supplier shall send us, without request and free of charge, safety data sheets in time before the first delivery and once again as soon as relevant changes become necessary. In particular the satisfaction of the registration obligation and the transmission of actual and full safety data sheets are seen by us as an essential basis of all deliveries. The Supplier hereby now already indemnifies us from all recourse claims of third parties for the event that the safety data sheets were not delivered, delivered with delay or with faults. In the event of the delivery with products according to the definition of REACH, the Supplier undertakes to only supply us with products with which the contents of substances of very high concern of the "list of candidates" of the European Chemical Agency do not exceed 0.1% (m/m). The Supplier will inform us if a substance of the list of candidates – also below the limit of 0.1% – is contained in the goods.



# General Terms of Purchase of ANDRITZ Schuler Pressen GmbH and Gräbener Pressensysteme GmbH & Co. KG

## § 7 Product liability - indemnification – liability insurance cover

- (1) Insofar as the Supplier is responsible for a product damage it undertakes to indemnify us from claims for damages of third parties upon first request to the extent that the cause lies within its scope of control and organisation and it is liable itself in the relationship towards third parties.
- (2) Within the framework of its liability for damaging events within the meaning of Par. 1 the Supplier also undertakes to reimburse possible expenses according to §§ 683, 670 BGB and according to §§ 830, 840, 426 BGB, which arise from or in connection with a recall action carried out by us. We will inform the Supplier – insofar as possible and deemed reasonable – about the contents and scope of the recall measures which are to be carried out and give it the opportunity to make a statement. This shall have effect on other statutory claims.
- (3) The Supplier undertakes to maintain product liability insurance with a sum insured of € 5 million per physical injuries/property damages – as a flat rate – and to submit proof hereof to us upon request. If we are entitled to further claims for damages these shall not be effected.
- (4) If we should have determined the defects for which the Supplier is responsible and/or undertake measures to avoid damages then only wilful intent and/or gross negligence of our bodies, employees and vicarious agents is to be attributed to us in the relationship to the Supplier.
- (5) The Supplier waives asserting recourse claims against in connection with product or producer liability. This exclusion shall however not apply with wilful intent or gross negligence or negligent breach of essential contractual duties by us and with the wilful or negligent injury to life, body and health by us.

## § 8 Property rights

- (1) The Supplier is responsible for ensuring that no rights of third parties are infringed in connection with its delivery.
- (2) If a claim is asserted against us by a third party owing to an infringement of its rights according to Par. 1 then the Supplier undertakes to indemnify us from these claims at the first written request.
- (3) The Supplier's obligation for indemnification refers to all expenses, necessarily incurred to us from or in connection with the claim asserted by a third party.
- (4) The statute-of-limitations is ten years, beginning from conclusion of the contract.

## § 9 Reservation of title of the Supplier

- (1) Insofar as the delivered goods concern those which have to be sold quickly by us owing to their condition or their intended use a reservation of title of the Supplier to the goods is excluded. We then hold the unlimited ownership with the delivery of the goods in our plant or at the acceptance points stated by us.
- (2) A reservation of current account as well as an extended reservation of title of the Supplier to the goods delivered by it is excluded in any cases. Provisions which deviate from this in General Business Terms, order confirmation, delivery note and invoices of the Supplier have no legal validity and

in fact also without an objection on our part in an individual case.

## § 10 Provision - tools

- (1) Insofar as provide parts to the Supplier we reserve the ownership hereto. Processing or conversion by the Supplier are carried out on our behalf. If our reserved goods are processed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of our object (purchase price plus value added tax) to the other processed objects at the time of the processing.
- (2) If the object provided by us is inseparably mixed with other objects not belonging to us we shall acquire the co-ownership to the new object in the ratio of the value of the reserved object (purchase price plus value added tax) to the other mixed objects at the time of the mixing. If the mixing is carried out to the extent that the Supplier's object is to be seen as the main object then it is deemed as agreed that the Supplier assigns us pro rata co-ownership; the Supplier shall keep the sole-ownership or the co-ownership in safekeeping on our behalf.
- (3) Insofar as the collateral rights, to which we are entitled according to Par. 1 and/or Par. 2 exceed the purchase price of all of our not yet paid reserved goods by more than 10 % we are obliged at the Supplier's request to release the collateral rights at our choice.
- (4) We reserve the ownership to tools; the Supplier undertakes to use the tools exclusively for the production of the goods ordered by us. The Supplier undertakes to insure the tools which belong to us at the value as new at its own costs against fire, water and theft damages. At the same time the Supplier hereby now already assigns all claims for compensation from this insurance to us; we hereby accept the assignment. The Supplier undertakes to carry out possible necessary service and inspection work as well as all maintenance and repair work on our tools in time at its own costs. It has to report possible interferences to us immediately; if it culpably fails to do so this shall have no effect on claims for damages.

## § 11 Non-disclosure obligation

- (1) The Supplier undertakes to maintain strict secrecy concerning all diagrams, drawings, calculations and other documents and information received from us. They may only be disclosed to third parties with our consent. The non-disclosure obligation shall also apply after the processing of this contract. A non-disclosure obligation of the Supplier shall not be established or will cease to apply if the diagrams, drawings, calculations and other documents handed over to it are publicly known at the time when they are handed over to it. Should the documents and information become public knowledge at a later time then the non-disclosure obligation shall cease to apply when they become known. The non-disclosure obligation shall also cease to apply if the documents/information become known to the Supplier from a third party in a lawful manner or if the Supplier has to disclose these owing to a judicial or official order.
- (2) If the Supplier breaches its non-disclosure obligation then it undertakes to pay to us a reasonable conventional penalty, which is to be fixed by us at our reasonable discretion for each breach. The Supplier and/or we are entitled to request the court of jurisdiction to examine the amount of the con-



# General Terms of Purchase of ANDRITZ Schuler Pressen GmbH and Gräbener Pressensysteme GmbH & Co. KG

ventional penalty.

## § 12 Environmental management

The Supplier undertakes to apply the environmental management principles of the relevant standard DIN EN ISO 14001 or EMAS when carrying out its deliveries and services. Deliveries and services are always to be carried out environmentally-friendly and capable of recycling, prohibited substances may not be used. The Supplier assures to also comply with all laws and regulations which relate to the environment with the procurement and/or the production of the object of delivery.

## § 13 Assignment

Rights and duties from this contractual relationship may only be assigned to third parties with our consent.

## § 14 Applicable law – place of jurisdiction – place of performance

- (1) This contractual relationship is exclusively subject, even if the Supplier's registered seat is overseas or the delivery is made from overseas, to the law of the Federal Republic of Germany under the exclusion of the UN Convention on the International Sale of Goods (CISG).
- (2) The exclusive place of jurisdiction is our registered seat provided that the Supplier is a merchant; we are however entitled to also file action against the Supplier at its court of registration.
- (3) The place of performance is, provided that it is not otherwise derived from the order, our registered seat.

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