

## General Terms and Conditions of Purchase of SMS Elotherm GmbH

### 1. Scope and contract conclusion

1.1 These Conditions apply to all deliveries/services of the Contractor ("Deliveries") to SMS Elotherm GmbH as the Principal.

1.2 Other conditions, irrespective of whether they contradict or supplement these Conditions, shall not constitute integral parts of the agreement, even if the Principal has not expressly contradicted these. Execution of the order placed by the Principal shall be deemed to constitute recognition of these Conditions.

1.3 Orders and agreements shall be binding only if they are issued or confirmed by the Principal in writing. The acceptance of orders must be confirmed to the Principal in writing without delay following receipt.

1.4 Any changes to the content of the agreement must be made in writing in order to be valid. This also applies to the waiver of this written form requirement.

1.5 Subcontracting shall be subject to the prior written consent of the Principal.

### 2. Prices along with terms and conditions of payment

2.1 The agreed prices are fixed prices and are understood – plus the respective applicable value added tax – to be free place of use including packaging and freight costs. If a price is agreed "EXW" or "FCA", the Principal shall assume only the most cost-effective freight charges. All costs incurred up to the handover to the freight forwarder, including loading and excluding haulage charges, shall be borne by the Contractor. The nature of the pricing shall not affect the agreement concerning the place of performance.

2.2 If the prices are not agreed in advance, in exceptional cases, they must be bindingly specified in the order confirmation. The Principal is entitled to contradict the price and/or to withdraw from the agreement.

2.3 Unless otherwise agreed, the Principal shall be entitled to pay either two (2) weeks after delivery and receipt of the invoice with a two percent discount or on the 25th (twenty-fifth) of the month following delivery and receipt of the invoice without a discount. If the Contractor renders construction services and an exemption certificate is missing, the Principal shall make a tax deduction of fifteen percent (15 %) of the respective gross invoice amount.

2.4 An assignment of claims brought against the Principal shall be subject to his prior written consent.

2.5 The Contractor shall be entitled to retain payments or to offset these against counterclaims only to the extent that these are uncontested or have been established with legal effect.

2.6 The Principal shall be entitled to offset with claims due and against claims due and not due, including future claims.

2.7 Every type of reservation of title, in particular an extended or expanded reservation of title, shall be excluded, insofar as the Principal has not expressly confirmed otherwise in his order with reference to these Terms and Conditions of Purchase.

### 3. Statutory provisions and trading clauses

3.1 Insofar as these conditions do not comprehensively govern the legal relationship between the Parties, the statutory provisions shall be applicable.

3.2 The ICC Incoterms in their latest version valid at the time of conclusion of the agreement shall be applicable to the interpretation of the trade clauses.

### 4. Delivery and delivery period

4.1 The place of performance for the delivery is the place of receipt specified by the Principal.

4.2 Partial deliveries and/or deliveries before the agreed deadline shall be subject to the prior written consent of the Principal. Additional costs incurred by partial delivery and/or advance delivery, such as freight costs etc., shall be borne by the

Contractor unless these deliveries have been expressly requested by the Principal and the Principal has expressly agreed to bear these costs.

4.3 Agreed delivery deadlines are binding. If the Contractor realises that he will be unable to meet a delivery deadline, he must inform the Principal without delay in order to enable the Principal to make possible alternative arrangements.

4.4 If the Contractor is in default with his delivery, the Principal shall be entitled, following expiry of a reasonable deadline set by him, to demand, at his discretion, delivery and compensation for damages due to delayed delivery or, in place of performance, compensation for damages due to non-performance and to withdraw from the agreement. If the Contractor is responsible for exceeding the delivery time or for defective performance, he shall pay a contractual penalty if and to the extent that this was stipulated in the order letter of the Principal.

4.5 The obligation of the Contractor to perform in accordance with the agreement shall remain unaffected by the payment of any contractual penalties. The Principal reserves the right to assert additional claims.

### 5. Shipping

5.1 In the case of delivery on call or interim storage at the request of the Principal, proper storage must be ensured. Invoice, delivery note and dispatch note are to be sent to the Principal in proper execution.

5.2 The Contractor shall be liable for the consequences of incorrect freight document declaration. The dispatch note must be submitted immediately upon the departure of each individual consignment. If the shipping documents do not include the designated place of receipt, department, order number, subject reference or issue reference, all incurred costs relating to this shall be borne by the Contractor.

5.3 The Contractor shall take out a transport insurance policy in order to cover his interests.

### 6. Drawings, execution documents, tools

6.1 Drawings and other documents, equipment, models, tools and other production means that are made available to the Contractor shall remain the property of the Principal. Tools and other production means that are paid for by the Principal must be transferred to him. The aforementioned items may not be scrapped or made available to any third parties, e.g. for production purposes, without the prior written consent of the Principal. They may not be used for purposes other than those that have been contractually agreed, e.g. must not be delivered to third parties.

6.2 The aforementioned items must be stored with care by the Contractor at his expense on behalf of the Principal throughout the execution of the agreement. Maintenance, repair and the replacement of parts shall be in accordance with the respective agreements reached between the Principal and the Contractor. The Principal shall reserve all rights to the drawings or products created in accordance with his specifications, as well as to the processes developed by him.

### 7. Requirements placed on the object of the delivery

7.1 The manufacturing regulations of the Principal "SN 200" contain binding minimum requirements for the Contractor. Unless otherwise agreed, the requirements specified therein must be complied with. All standards applicable to the delivery, such as e.g. DIN, EN, ISO, must also be complied with. If deviations from the manufacturing regulations or applicable standards are necessary on a case-by-case basis, the Contractor must obtain the prior written consent of the Principal. Any such consent shall not, however, release the Contractor from his contractual and statutory obligations.

7.2 Disclosure requirement in accordance with Article 33 of the REACH Directive: As a manufacturer or supplier of products, you are obliged to inform us if the delivery contains one or more substances of very high concern (SVHC) from the candidate list in excess of 0.1 wt%. If this is the case, we require the following information:  
Name of the substance (SVHC candidate list), CAS number, content in wt%, subassembly containing SVHC.

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The disclosure requirement always applies to the current valid candidate list.

### 8. Liability for defects

#### 8.1 Material defects

**8.1.1** The Contractor warrants that all deliveries correspond to the latest technological advances, all relevant legal provisions and regulations and directives issued by public authorities, professional cooperatives and specialist associations and – insofar as handed over – the requirements set out in the drawings and specifications of the Principal. If deviations are necessary on a case-by-case basis, the Contractor must obtain the prior written consent of the Principal. Any such consent shall not release the Contractor from his contractual obligations.

**8.1.2** In conjunction with his goods and deliveries, and in the case of third party secondary performances, the Contractor undertakes to deploy environmentally-friendly products and processes, insofar as these are economically and technically possible. The Contractor shall be liable for the environmental compatibility of the delivered products and packaging materials and for all damage caused by a breach of his statutory disposal obligations. At the request of the Principal, the Contractor shall issue an inspection certificate for the delivered goods.

**8.1.3** The Principal shall inspect the goods upon receipt in respect of their identity, comprehensiveness and externally visible damage, in particular transport damage, and shall issue respective formal complaints without delay. There are no further obligations to conduct inspections or give notice of defects.

**8.1.4** If the deliveries are defective, the Contractor shall be obliged to rectify the defects without delay at his own expense, including all ancillary costs, also including any possible incurred disassembly and reassembly costs, at the discretion of the Contractor by eliminating the defect or delivering a defect-free item. In addition, the Principal shall be entitled to the further statutory rights in the event of defects.

**8.1.5** If the Contractor fails to fulfil his obligation of subsequent performance within a reasonable period set by the Principal, the Principal may remedy the defect himself or have this remedied by third parties at the expense and risk of the Contractor, without prejudice to his other liability for defects.

**8.1.6** In urgent cases, the Principal may, following consultation with the Contractor, perform the measures necessary for subsequent performance himself or have these performed by third parties. In the interests of undisrupted production, the Principal may rectify minor defects himself, without coordinating this in advance with the Contractor, and may charge the incurred expenses to the Contractor, without this affecting the Contractor's liability for defects. The same applies if there is a risk of unusually extensive damage.

#### 8.2 Defects of title

The Contractor warrants that his deliveries and/or the use of his deliveries do not infringe third party industrial property rights, in particular patents, utility models, trademarks, copyrights and competition rights, business and trade secrets. If use of the deliveries leads to a breach of third-party industrial property rights, the Contractor shall, at the discretion of the Principal, either grant the Principal the right to continued utilisation or shall modify the deliveries in a manner that is acceptable to the Principal and in such a way that the property rights are no longer breached. In addition, the Contractor shall indemnify the Principal and his customers against all claims brought by third parties to the extent that this is permissible.

**8.3** Unless otherwise agreed, the limitation period for defect claims amounts to twenty four (24) months following acceptance of the deliveries by the Principal or handover by the Contractor to the third parties specified by the Principal at the place of receipt or place of utilisation stipulated by the Principal.

### 9. Export controls

The Contractor is obliged to inform the Principal proactively at the time of the order confirmation about any possible goods-related approval obligations applicable to his goods pursuant to German, European and US export regulations.

### 10. Confidentiality and industrial property rights

**10.1** All drawings, documents as well as all other information exchanged between the Parties directly or indirectly, orally or in writing, within the context of the agreement or the contract initiation must be handled strictly confidentially and may be forwarded to third parties only with the express prior consent of the other Party. This obligation shall remain in force for a period of ten (10) years from the time of the initiation of the contract.

**10.2** Both the Contractor as well as the Principal are obliged to oblige all employees who have access to the aforementioned information to keep this knowledge secret and neither to use this themselves, nor to make it available to any third parties. This obligation shall be imposed upon these employees not merely for the duration of their employment relationship, but also for the period after they have left the company.

**10.3** All industrial property rights to the drawings of the Principal and other documents shall be retained by the Principal and may not be exploited or made available to any third party without his prior written consent. The same applies to other technical details arising out of the order or that are disclosed in the other correspondence or during the course of the negotiations. No provision of these conditions may be interpreted in such a way that establishes rights of any nature whatsoever for the Contractor to the industrial property rights of the Principal.

**10.4** The Parties acknowledge these obligations at the time of the commencement of the contractual negotiations, irrespective of whether an agreement is established.

### 11. Compliance

The Contractor is obliged to comply with the laws of the respective applicable legal system. In particular, he must comply with the regulations combating corruption that are applicable to the contracting Parties. If the Contractor breaches this obligation, the Principal shall be entitled, without prejudice to further claims, to terminate the agreement or to withdraw from this.

### 12. Limitation period

Claims brought against the Principal on the basis of or in conjunction with his order shall be statute-barred after a period of two (2) years have elapsed following the date of the receipt of the delivery and the invoice. If the date of receipt of the delivery and the date of receipt of the invoice do not correspond, the earlier date shall be applicable.

### 13. Place of jurisdiction and applicable law

**13.1** The exclusive and sole place of jurisdiction is Düsseldorf. The Principal is however also entitled to sue the Contractor at his place of business.

**13.2** The law of the Federal Republic of Germany is applicable, whereby the UN Sales Convention is excluded.