



# GENERAL TERMS AND CONDITIONS FOR PURCHASE AND SUPPLY

SPICER GELENKWELLENBAU

## 1. General Provisions, Scope

### 1.1 Parties, Scope of Application

These General Terms of Purchase and Delivery (hereinafter "Purchase Conditions") are applicable to all orders of goods or services (hereinafter "Performances"), which Spicer Gelenkwellenbau GmbH or its legal successors (hereinafter "Purchaser") places within the course of business with an entrepreneur as defined in section 14 German Civil Code (§ 14 BGB) or a special fund under public law (hereinafter "Supplier") by way of purchase contract, a contract to produce a work or any other agreement.

### 1.2 Scope, Version, Exclusion of other Conditions

1.2.1 The Purchase Conditions apply exclusively to contracts between the Supplier and the Purchaser and orders of the Purchaser, in their respective valid version, which can be accessed at [www.gwb-essen.de](http://www.gwb-essen.de), and which will be provided to the Supplier by the Purchaser upon request. The Purchase Conditions are applicable to current business relationships between Purchaser and Supplier also in case that the Purchase Conditions are not expressly agreed on by the Parties.

1.2.2 General Terms and Conditions of the Supplier, which are contrary to or differing from the Purchase Conditions, are inapplicable, unless the Purchaser has expressly and in writing consented to the application of such Terms and Conditions. The Purchase Conditions shall also apply in case that Purchaser accepts a Performance without reservation, despite being aware of General Terms and Conditions of the Supplier contrary to or differing from the Purchase Conditions.

## 2. Conclusion of contract (Offer, Order), Deviation, Documentation, Delivery Requests

### 2.1 Offer and Order

2.1.1 In a declaration of intent, made in reply to a request for quotation of the Purchaser and aimed at the conclusion of a contract (hereinafter "Offer") the Supplier has to comply with the request for quotation regarding quantity and quality of the Performances and has to make a written notification in case of deviations. The Supplier has to provide the Offer immediately and free of cost.

2.1.2 If the Purchaser issues a declaration of intent, aimed at the conclusion of a contract (hereinafter "Order"), Purchaser is bound to the Order for fourteen (14) days.

2.1.3 If a declaration of intent of the Supplier in reply to an Order deviates from the Order, the Supplier has to issue a written notification of the deviation to the Purchaser. If the Supplier doesn't issue the notification, neither the Purchaser's silence, nor the reception of the goods or services by the Purchaser shall be interpreted as acceptance.

### 2.2 Changes to the Subject Matter of the Contract

2.2.1 The Purchaser may demand changes and amendments to the Performances regarding construction and design from the Supplier within a reasonable scope. Any increase or decrease of cost, as well as any consequences for delivery dates are subject to a separate agreement.

2.2.2 The Supplier may not make any changes to the Performances without the Purchaser's prior consent.

### 2.3 Documentation

2.3.1 All documentation and information regarding the respective Performance (e.g. drafts, descriptions, weight specifications, performance features, functionality) are deemed to be regarded as an agreement on the legal and factual nature of the Performance.

2.3.2 The Supplier shall provide all documentation (e.g. verification certificates, instructions) necessary for the contractually agreed use of the Performance in a suitable form.

## 2.4 Delivery Requests

Requests for delivery of the Purchaser (hereinafter "Delivery Requests") will, if not otherwise agreed in writing, become binding for the Supplier, if the Supplier does not contradict within one week after receipt of the Delivery Request. Delivery Request may be issued by remote data transmission (e.g. telefax, email).

## 3. Delivery

### 3.1 Packaging and Shipment

3.1.1 Delivery and Shipment will be performed free of all expenses and on the Supplier's costs and risk. If not - in an individual case - agreed otherwise in writing, all deliveries shall be shipped at the respective lowest cost, unless Purchaser expressly stipulates a specific method of shipment.

3.1.2 Additional costs, which are caused by an accelerated shipment, having become necessary to comply with delivery deadlines, are borne by Supplier, unless Supplier can prove that the Purchaser is liable for the necessity of the accelerated shipment.

3.1.3 Road cargo has to be delivered, if not otherwise agreed in writing, to the address specified in the Order and will be received Monday till Thursday from 7.00 a.m. to 2.30 p.m. and Friday 7.00 a.m. to 1.00 p.m. at the Purchaser's plants at the following addresses:

- |       |              |                                   |
|-------|--------------|-----------------------------------|
| (i)   | Werk I:      | Westendhof 5-9, 45143 Essen       |
| (ii)  | Werk II:     | 2. Schnieringstr. 49, 45329 Essen |
| (iii) | Werk Dachau: | Röntgenstr. 8, 85221 Dachau       |

3.1.4 Goods shall be delivered in standard single-use packaging according to custom and industry standards. Reusable packaging will only be returned by the Purchaser on the Supplier's cost and risk and only in case the Supplier has marked in the delivery documents that packaging is provided on a loan basis. In case of a separate agreement between Purchaser and Supplier on the delivery in containers of the Purchaser, the respective agreement shall be applicable.

3.1.5 The Supplier is obliged to recite the Purchaser's order number on all shipment and delivery notes. If Supplier doesn't recite such order number, the Supplier shall bear all costs caused thereby, including delay of handling, unless Supplier can prove that Supplier is not liable for such costs.

### 3.2 Dates, Quantities, Deviations, Changes, Partial Performances

3.2.1 The delivery deadlines and delivery dates as specified in the respective Order are legally binding. For the compliance with the specified delivery deadlines and delivery dates the arrival of the Performances at the Purchaser is relevant. In case of an agreement, whereas Purchaser shall collect goods itself, the Supplier shall provide such goods in good time in consideration of the usual duration of loading and shipment and shall notify Purchaser in sufficient time.

3.2.2 The Supplier shall immediately issue a written notice to the Purchaser, if circumstances occur or become noticeable, in consequence of which an agreed delivery date cannot be complied with.

3.2.3 In case that Performances are delivered before the agreed delivery date, especially in case deliveries or partial deliveries are conveyed to the Purchaser, the Purchaser is entitled to refuse such Performances and – as the case may be – resend such Performances or put such Performances into stock at a third party at the Supplier's cost and risk.

3.2.4 The Purchaser is entitled to refuse excess or short deliveries.



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- 3.2.5 Partial Performances are only admissible upon separate written agreement.
- 3.2.6 Delivered goods that show deficiencies or do not comply with the Order in any other respect, shall be collected by the Supplier at the Purchaser on Purchaser's own costs. The Purchaser is entitled to have such goods conveyed to the Supplier unfree.
- 3.2.7 The Purchaser is entitled to change agreed delivery dates within reasonable limits, if such change is necessary to ensure the unimpaired operation of the Purchaser's business.

## 3.3 Default, Cancellation, Damages

- 3.3.1 If performances are not provided at the agreed delivery date, especially if deliveries or partial deliveries or samples do not arrive at the agreed date at the agreed place of acceptance, the Purchaser is entitled to cancel the contract in whole or in part and demand damages instead of the Performance after having set a reasonable time limit without effect – notwithstanding other statutory rights. In case the Purchaser demands damages, the Supplier has the right to prove that Supplier is not liable for the breach of contract. In case a fixed time is agreed, or the setting of an additional time line is dispensable for other reasons by law, the Purchaser can use such rights immediately without setting Supplier another deadline.
- 3.3.2 In case of default of Supplier, the Purchaser is – notwithstanding the rights according to **sec. 3.3.1** – entitled to demand fixed damages for default to the amount of 1 percent of the value of the delivery in default for any full week of default of delivery, but limited to a maximum of 10 percent. Exceeding statutory rights of the Purchaser shall remain unaffected. The Supplier is entitled to prove to the Purchaser that no damages or damages in a lesser amount have accrued. In case the Purchaser can prove that greater damages have accrued, Purchaser can claim damages in that higher amount in addition to its rights according to **sec. 3.3.2 Sentence 1**.

## 4. Examination, Notification, Quality Management, Documentation

### 4.1 Examination of Performances, Reproof

- 4.1.1 The Purchaser is obliged to examine the received Performances for possible deviations in quality or quantity within a reasonable time. The examination is based on the Purchaser's quality criteria. The Purchaser's obligation of examination shall be deemed fulfilled, if the Purchaser performs the examination by way of significant spot tests.
- 4.1.2 The Purchaser shall issue a notice to Supplier of obvious defects in good time, so that the notification will arrive at Supplier within 5 working days. In case of purchase according to specimen, the Purchaser has no obligation to make notification to Supplier, if the delivery deviates from specimen. Purchaser shall issue notification of all other defects, as soon as such defects are detected within the normal course of business. Within the scope of the foregoing **sec. 4.1.2 sentence 1 to 3**, the Supplier waives the objection of delayed notification of defects.

### 4.2. Quality Management, Documentation

- 4.2.1 The Supplier has to comply with the established rules of technology and science, legal provisions, regulations, security provisions, general security standards and agreed technical data, as applicable at the time of delivery.
- 4.2.2 Purchaser is only obliged to accept hazardous materials, if Supplier provides a security data sheet, which complies with the applicable legal provisions and regulations (e.g. the Regulation on transportation of hazardous materials by road, railway and inland waterway transportation - Gefahrgutverordnung Straße, Eisenbahn und Binnenschifffahrt GGVSEB; Recycling Management and Waste Act - Kreislaufwirtschafts- und Abfallgesetz) at the time of delivery.
- 4.2.3 The Supplier has to establish, improve and verify a Quality Management System (QMS) according to the established rules. The

minimum requirements for the QMS are the requirements of ISO 9001 (most recent version). The Supplier will use all reasonable efforts to establish a QMS according to ISO/TS 16949 (most recent version).

The Supplier shall maintain a certified environmental management system according to ISO 14001 (most recent version).

It is expressly recommended to Supplier to align all precautions and measures within the scope of industrial safety with OHSAS 18001 (most recent version).

The Purchaser has the right to inspect the management systems of the Supplier on-site within a reasonable scope (e.g. by performing audits).

4.2.4 The Supplier has to monitor the quality of the Performances permanently. Purchaser and Supplier (hereinafter jointly also "**Contractual Partners**") shall inform each other on the possibilities of quality improvement. Furthermore, the Supplier will – within reasonable limits – cooperate with the Purchaser as well as with customers and/or suppliers of the Purchaser regarding value analysis, value technology and other running programs on improvement of product quality.

4.2.5 In the case that Purchaser's supplier quality manual is handed out to the Supplier or the Supplier has received the supplier quality manual by other means, especially by downloading it from Purchaser's website, the Supplier shall also comply with the quality standards and processes defined in the supplier quality manual. The respective most recent version of the supplier quality manual is available at <http://supplier.dana.com/sdmanual/>.

4.2.6 In case the Contractual Partners have concluded a separate agreement on Quality Management, such separate agreement shall prevail the foregoing **sec. 4.2.3 to 4.2.5**.

## 5. Prices, Taxes and Dues

### 5.1 Prices

- 5.1.1 The prices specified in the respective Order are agreed as fixed prices and are legally binding.
- 5.1.2 The fixed prices are valid for the entire processing of the Order. The Supplier shall not without Purchaser's explicit written approval make changes to the prices or charge additional fees or surcharges.
- 5.1.3 Unless otherwise agreed in writing, the agreed price includes "delivery free domicile" of the performance including packaging. Except the cases of **sec. 3.1.4** the Purchaser is only then obliged to return packaging, if an explicit written agreement has been concluded.

### 5.2 Taxes and Dues

The prices specified in the Orders are net prices and, therefore, do not contain V.A.T.. Taxes and dues accrued have to be specified separately by Supplier.

## 6. Invoices, Payment Conditions

### 6.1 Invoices

The Purchaser is only obliged to accept invoices of the Supplier, if the order number, which is specified in the respective Order, is specified in the invoice. The Supplier has to account for delays and other consequences in case of non-compliance with such specifications of the invoices, if Supplier does not prove that it is not liable for such delays or consequences.

### 6.2 Payment Conditions

- 6.2.1 Purchaser shall, unless otherwise agreed in writing, pay the agreed purchase price



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- (i) within 14 days, calculated from delivery and receipt of an verifiable invoice in due form with a cash discount of 3 percent or
- (ii) within 30 days after Delivery and receipt of invoice without deduction.

6.2.2 In case of an agreement on a credit note process or a consignment warehouse, the conditions of such agreement shall prevail. Deliveries, which are performed before the agreed delivery time, shall be deemed as received on the agreed delivery time.

6.2.3 The Purchaser shall have the right of retention and the right to set-off as provided by law.

## 7. Warranty, Warranty period

### 7.1 Warranty Claims

7.1.1 The Purchaser's statutory warranty claims, including the right to terminate an agreement and damage claims are not restricted.

7.1.2 Especially, in case of defect the Purchaser is entitled to demand within its sole discretion remedy of the defect or replacement delivery, irrespective of the nature of the contract to be classified as a purchase agreement or an agreement for work with fixed deliverables, unless the Supplier proves that the chosen kind of replacement fulfillment of the contract would cause unreasonable costs for the Supplier. The Purchaser explicitly reserves the right to claim damages, especially damages instead of fulfillment.

### 7.2 Fulfillment of contract by way of substitution

Subject to agreement with the Supplier, the Purchaser may perform the remedy of defects by itself or through a third party. This also applies to defective deliverables in case of a contract on work with fixed deliverables, if the Supplier has not complied with its obligation to provide remedy for the defect within a reasonable deadline set by the Purchaser. In case of imminent danger the Purchaser is entitled to perform the remedy of defects by itself or through a third party without prior agreement with the Supplier.

### 7.3 Warranty Period

The warranty period shall be 36 months beginning with the passing of the risk, unless the compulsive stipulations of sec. 478, 479 (German Civil Code, BGB) are applicable.

## 8. Product liability, Indemnity, Insurance

### 8.1 Indemnity

In case of defect of product, the Supplier shall indemnify the Purchaser immediately on Purchaser's demand in so far as the cause of the defect has been established in Purchaser's domain or within the range of Purchaser's organization and Purchaser would be liable vis-à-vis a third party. To any compensation of damages between Purchaser and Supplier the principles of sec. 254 German Civil Code (BGB) shall apply *mutatis mutandis*.

### 8.2 Insurance

The Supplier shall maintain a product liability insurance providing an amount of coverage of at least a fixed-sum of EUR 5 m. per liability case (personal damage/material damage). Exceeding damage claims of the Purchaser shall remain unaffected by the existence of insurance coverage.

### 8.3 Notification

In case the Supplier becomes aware of accidents or other incidents of relevance for the product security of delivered goods, Supplier has to notify the Purchaser immediately and to provide all documents at its disposal.

## 9. Recalls, Reimbursement of Expenses

Within the scope of its liability according to **sec. 8.1** the Supplier shall reimburse Purchaser possible damages (e.g. according to sec. 683, 670 or

sec. 830, 840, 426 German Civil Code (BGB)), which arise out of or in connection with a recall process performed by the Purchaser or a customer of the Purchaser (e.g. a vehicle manufacturer). The Purchaser will keep the Supplier informed on the subject matter and volume of any recall process according to its capacities and within reasonable limits and will receive the Supplier's statements. The Purchaser's statutory rights shall remain unaffected.

## 10. Industrial Property Rights

### 10.1 Industrial Property Rights of the Purchaser

The Purchaser neither transfers nor licenses any patents, trademarks, copyrights or other industrial property rights or trade secrets to Supplier along with figures, drawings, models, molds, calculations and other documents and/or information, which the Purchaser makes available to the Supplier, to the exclusion of the right to use the respective right solely for the purpose of providing the Performances.

### 10.2 Industrial Property Rights of Third Parties

10.2.1 The Supplier warrants that the Performances and the contractual use thereof will not breach any industrial property rights or applications for industrial property rights of third parties.

10.2.2 The Supplier will indemnify the Purchaser immediately upon first request in case the Purchaser is made liable by a third party for the breach of any industrial property right or application for industrial property rights regarding Supplier's liability according to **sec. 10.2.1**.

10.2.3 The Supplier's obligation of indemnification comprises all necessary expenses, which arise for the Purchaser in connection with the claims of the third party.

10.2.4 Without the Supplier's prior approval, which, however, may not be withheld or delayed without reason, the Purchaser may not accept the demands of the third party or conclude a settlement.

10.2.5 The Purchaser's claims according to this warranty shall be time-barred after 36 months, beginning with the passing of the risk.

10.2.6 The Contractual Partners will keep each other informed on all risks of breach of rights or alleged cases of breach of right, which become noticeable.

## 11. Property

### 11.1 Property of Purchaser, Providing, processing, conversion, mixing

11.1.1 The Purchaser reserves all property rights and copyrights to Purchaser's figures, drawings, models, molds, calculations and other documents and information. All of the aforementioned documents and information may be used by the Supplier exclusively for providing the Performances according to the Order of the Purchaser. Such documents and information have to be returned to Purchaser unsolicited upon execution of the contract.

11.1.2 The Purchaser shall remain the sole owner of all materials provided to the Supplier. Processing or conversion of such materials by the Supplier shall be deemed as performed for the Purchaser. In case any object of the Purchaser is processed together with materials owned by a third party, the Purchaser will acquire joint property concerning the new object pro rata according to the relationship of the value of Purchaser's object (purchase price plus VAT) to the value of the other processed materials at the time of processing.

11.1.3 In case any object owned by the Purchaser is mixed with materials owned by a third party, the Purchaser will acquire joint property concerning the new object pro rata according to the relationship of the value of the object owned by the Purchaser (purchase price plus VAT) to the value of the other mixed materials at the time of mixing. Is the mixing performed in such a way that the Supplier's object shall be regarded as main object, it is deemed as agreed that the Supplier



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shall grant joint property in proportion. The Supplier will keep the sole property or joint property for the Purchaser.

## 11.2 Tooling

11.2.1 The Purchaser reserves all rights, especially its property rights, concerning all tools, molds and other manufacturing equipment, which Purchaser provides to Supplier in connection with the execution of the contract. Such tools, molds and other manufacturing equipment may only be used for manufacturing based on the Order of Purchaser. They are kept by the Supplier for the Purchaser and shall be returned to the Purchaser upon fulfillment of the contract.

11.2.2 Tools, molds and other manufacturing equipment, which the Supplier fabricates itself in performing an Order and which are paid by the Purchaser, will pass into the Purchaser's property upon fabrication. In case the costs for such tooling are only charged in proportion, the Purchaser will only acquire proportional joint property; the Purchaser may claim transfer of full property in exchange for payment of the remaining costs anytime. The tools, molds and other manufacturing equipment shall be kept safe for the Purchaser and may only be used for performing the Order of the Purchaser. Tools, molds and other manufacturing equipment which are property of the Purchaser shall be returned to Purchaser immediately upon early termination of the contract or after fulfillment of the contract upon Purchaser's request; in case the Purchaser has only acquired joint property concerning the tools, molds and other manufacturing equipment, this shall only apply in case the Purchaser acquires sole property in exchange for payment of the remaining costs.

11.2.3 The Supplier shall maintain adequate insurance against damages through fire, water and theft for the tools, molds and other manufacturing equipment mentioned above under **sec. 11.2.1 and 11.2.2**. The Supplier herewith assigns all claims arising out of such insurance to Purchaser. Purchaser accepts the assignment. Supplier shall perform all service, inspections and maintenance as well as reinstatement work in due time on its own costs. Supplier shall notify Purchaser immediately of damages and breakdowns.

11.2.4 In case Purchaser and Supplier have entered into a separate written agreement on the keeping of tooling, the provisions of such agreement shall prevail. In this case, these Purchase Conditions shall apply ancillary.

## 11.3 Retention of Title of the Supplier

11.3.1 The Supplier shall keep the property concerning the delivered goods until full payment by Purchaser.

11.3.2 Any extended or overall retention of title (verlängerter oder erweiterter Eigentumsvorbehalt) shall be deemed legally void.

## 12. Confidentiality

### 12.1 Confidential Information

12.1.1 The Supplier shall treat all business and technical details and secrets, which are not obvious and which come to Supplier's knowledge in connection with an Order or the execution of the contract, as well as all figures, drawings, models, molds, calculations and other documents and information the Purchaser may make available to the Supplier, strictly confidential. Confidential information may only be passed on, exposed or made available to third parties, if and to the extent that Purchaser has approved beforehand in writing.

12.1.2 The Supplier may only store or copy confidential information in the extent that is necessary for the proper execution of contract.

12.1.3 The Supplier shall return all confidential information to the Purchaser upon the fulfillment of the contract or destroy such confidential information upon Purchaser's request and provide evidence for such destruction.

### 12.2 Continuing Confidentiality

The obligation of confidentiality shall remain in force after complete fulfillment of the contractual relationship. It shall expire if and to the extent that confidential information has become known to the public without breach of the obligation of confidentiality by the Supplier, latest for a period of five years after the conveyance of the last confidential information and complete fulfillment of the contractual relationship.

## 13. Miscellaneous

### 13.1 Place of Performance

If not otherwise defined in the Order, the place of performance (Erfüllungsort) is Essen.

### 13.2 Applicable Law

The contract and all non-contractual claims and rights in connection with the contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) and the provisions on conflict of law.

### 13.3 Place of Jurisdiction

For all contractual and non-contractual disputes in connection with the contract, the competent courts for Essen shall have exclusive jurisdiction. This shall also apply in case that the Supplier has no statutory residence or place of effective management within the Federal Republic of Germany.

### 13.4 Language version

These Purchase Conditions are issued in German and English language. In case of deviations between the different language versions, the German version shall prevail.

*Date 06/12*