

## **Purchasing Terms and Conditions of Semperflex Optimit s.r.o. Odry**

### **1. General provisions**

#### **1.1. Conclusion of contracts**

- 1.1.1. Unless stipulated otherwise, all purchase orders for supplies to Semperflex Optimit s.r.o. Odry (hereinafter the "SFO" or the "Purchaser" or the "Client") are subject to these Purchase Conditions. If a specific contract contains provisions derogating from these Purchasing Conditions, the derogating provisions in the contract shall prevail. The delivery terms and conditions of the seller shall not apply even if an act of the Client (e.g. no reservations, payment, acceptance) could be regarded as consent thereto.
- 1.1.2. Purchase orders must be confirmed by returning the attached copy of the purchase order. If the confirmation is not delivered to the Client within 14 days, it may cancel the purchase order.
- 1.1.3. All agreements and all specifications of the Purchaser are valid only when made in writing. Purchase orders made orally or by fax, with specification of the purchase order number and subsequent confirmation in writing, are the only exceptions.
- 1.1.4. The latest valid version of Incoterms applies to all commercial terms.
- 1.1.5. Unless agreed otherwise in the contract or purchase order, the warehouse at the registered office of SFO is the place of performance. The ownership title and all risks pass to the Purchaser upon handover of the goods to the Purchaser.

#### **1.2. Manner and time of delivery**

- 1.2.1. The seller is obliged to deliver the goods on the date set out in the contract. The supplies shall take place on the basis of the Purchaser's instructions. The goods must be properly packed. A supply must comply with Czech safety regulations and regulations on packaging and hazardous substances and the related documents must be attached (e.g. safety data sheets). Packages must be handled in accordance with our rules and based on agreement with us. Unless agreed otherwise, the supplies are DAP (to the place specified in the purchase order) under the most recent valid version of Incoterms 2010. Unless the contract specifies the manner of packaging or preparing the goods for transportation, the seller is obliged to pack or prepare the goods for transportation in the manner which is customary for such goods in the usual business relations or, if this manner cannot be determined, in the manner required for preserving and protecting the goods.
- 1.2.2. The goods can be insured against damage in transportation or other damage at the Purchaser's costs only if this has been expressly agreed.
- 1.2.3. Partial deliveries can be made only with the prior consent of the Purchaser.
- 1.2.4. Unless the contract stipulates otherwise, the time limit in which the goods are to be delivered shall commence on the date of execution of the contract.
- 1.2.5. The supplier is obliged to deliver to the Purchaser the documents required for acceptance and use of the goods, as well as other documents stipulated in the contract. Unless provided otherwise in the contract, the documents shall be delivered at the place and time of acceptance of the goods.

#### **1.3. Payment**

- 1.3.1. Unless agreed otherwise, all prices are fixed.

- 1.3.2. Payments represent neither acknowledgement of regularity of the delivery nor waiver of any claims.
- 1.3.3. Unless agreed otherwise, the prices are based on the DAP parity under the most recent valid version of Incoterms 2010. The price includes all costs of packaging, transportation, insurance and any other applicable fees. Specification of the purchase price in the contract is considered to be a prerequisite for conclusion of the contract.
- 1.3.4. If an invoice contains an inaccurate indication of the price or lacks the required requisites, SFO shall have the right to return it to the supplier for correction or supplementation. In that case, the original maturity period shall be cancelled and a new maturity period shall commence upon delivery of the corrected invoice back to SFO in the manner under Art. 1.3.5.
- 1.3.5. The supplier agrees to deliver invoices to the financial accounting department at the Purchaser's address set out in the purchase order. The period of maturity of an invoice shall commence on the date of delivery of the invoice to the said address.  
In cases of doubt, an invoice shall be deemed to have been delivered on the tenth day after it was demonstrably sent by the supplier.

#### **1.4. Delayed delivery**

- 1.4.1. A delay by the supplier constitutes a material breach of the contract and the Purchaser is entitled to withdraw from the contract with immediate effect provided that it notifies the seller of the withdrawal without unnecessary delay after learning of the breach. If a fixed delivery date was agreed, the withdrawal from the contract shall become effective upon non-observance of the date unless the Purchaser requests additional performance of the contract within 14 days of commencement of the delay.
- 1.4.2. If the delivery deadline is exceeded, the supplier must pay, notwithstanding its culpability, a contractual penalty in the amount of 0.5% of the total price of the delivery for each commenced week of delay, but not exceeding 5% of the total price. If the contract was cancelled on grounds of delay or if the supplier is unable to provide performance under the contract, it shall pay 5% of the total price as a contractual penalty in each individual event. This shall in no way prejudice the entitlement to compensation for damage.

#### **1.5. Delivery of defective goods**

- 1.5.1. Any information ascertained by the Purchaser upon acceptance of the goods concerning the delivered quantity, dimensions, weight and quality shall be decisive unless the supplier demonstrates its inaccuracy. The supplier must be notified of any ascertained defects within 1 month of acceptance of the goods. Hidden defects may be claimed later. A general warranty period of 2 years shall apply.
- 1.5.2. In case of defects of the delivered items, the Purchaser has the right to choose among withdrawal from the contract, reasonable discount and elimination of the defect through repair or delivery of replacement goods. The repair of the defective goods or delivery of replacement goods must be made without unnecessary delay and at the supplier's costs. The Purchaser has the right, in urgent cases, to eliminate the defects itself at the supplier's costs. The choice of the claim resulting from defects of the goods (elimination of defects through delivery of goods replacing the defective goods, delivery of missing goods, elimination of legal defects, elimination of defects by repairing the goods if the defects are repairable, discount on the purchase price or withdrawal from the contract including reimbursement repayment of the purchase price) shall be notified by the Purchaser to the supplier in writing.
- 1.5.3. If the Purchaser is unable to use the delivered goods due to defects, the supplier must pay a contractual penalty under the rule set out in par. 1.4.2. above for the period until the elimination of the defect. If the Purchaser withdraws from the contract, 5% of the purchase price must be paid to him at any event as a contractual penalty. This shall be without prejudice to claims for compensation for damage and such claims can be made additionally.

1.5.4. The supplier is also responsible for its subcontractors. Compensation for damage may also be claimed for any shortcoming consisting in a decrease in the value of a delivered item due to its defect, with the exception of cases where the agreed purchase price was reduced on the basis of the claimed defects.

**1.6. Rights to intangible assets**

The supplier guarantees that the delivery has no legal defects, i.e. it is not encumbered with third-party rights and that no invention or other third-party rights to intangible assets inland or abroad are violated through the delivery and use.

**1.7. Commercial secrets**

The supplier must treat SFO's purchase orders and all related commercial and technical data as trade secrets. The supplier may refer to the business relations with SFO only subject to the prior consent of the SFO.

**1.8. Safety and miscellaneous provisions**

1.8.1. The delivered goods must comply with all safety provisions and health protection regulations (laws, regulations, standards, etc.) applicable in the Czech Republic, particularly the provisions on work safety and regulations concerning electrical engineering applicable in the Czech Republic. The supplier is liable for all damage following from breach of this contractual obligation.

1.8.2. If bankruptcy proceedings are initiated against the supplier after the contract is concluded, the Purchaser is entitled to immediately withdraw from the contract.

**1.9. Local jurisdiction, place of performance, applicable law**

1.9.1. The court having local jurisdiction in the Czech Republic shall resolve all disputes between the parties related to the contract on supplies. The following shall apply if the registered office of the supplier is abroad:

All disputes following from this contract or related to its breach, cancellation or invalidity shall be finally resolved under the Rules of Arbitration and Conciliation of the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by one or several arbitrators appointed under the Rules.

However, the Purchaser may bring proceedings against the supplier at courts having jurisdiction based on the registered office of the supplier.

1.9.2. The main registered office of the Purchaser shall be the place of performance for payments.

1.9.3. The contract on supply and any claims related therewith shall be governed exclusively by Czech laws in the valid wording, particularly Act No. 89/2012 Coll., the Civil Code, as amended. The application of the United Nations Convention on Contracts for the International Sale of Goods published under No. 160/1991 Coll. and comparable treaties is excluded.

Odry, 1st August 2014

## **2. Supplies concerning assembly of equipment**

### **2.1. Payments**

Any assembly or installation work is generally included in the purchase price. If the contrary has been agreed, invoices for assembly can be paid only subject to submission of proof of assembly or installation which must be confirmed by the Purchaser. The confirmed proof of assembly shall be kept by the seller and the Purchaser has the right to receive a copy thereof.

### **2.2. Delivery**

If requested and agreed, the obligation of the liable party includes the provision of a full set of assembly drawings in a form fit for copying and models. The Purchaser has the right to use such drawings to make changes, corrections, to produce spare parts, etc. and make the drawings and models available to third companies for this purpose.

### **2.3. Delay**

If an event of default occurs with the supplies of investment assets, this constitutes a material breach of the contract which entitles the Purchaser to withdraw from the contract with immediate effect. The supplier must be informed of the withdrawal without unnecessary delay.

### **2.4. Acceptance**

A delivery is deemed accepted if the Purchaser declares after testing that it accepts the delivery (written declaration of acceptance). Through this declaration, the Purchaser in no case waives any claims resulting from defects including the claiming of defects under the warranty. If the testing of a delivery requires tests or trial operation, these must be made by the supplier at its costs.

### **2.5. Warranty**

2.5.1. By virtue of a written declaration, the supplier shall confirm the origin of the goods and guarantee that the delivered goods can be used for a specific period of time for contractually agreed or usual purposes or that they will preserve the usual characteristics; generally, however, a warranty period of at least two years is generally agreed.

Assumption of warranty obligations can follow from the contract or from the seller's declarations including, without limitation, the warranty certificate. Information on the warranty period, date of expiry or shelf life of the goods provided on the packaging has the same effect. However, if a different period is specified in the contract or the warranty certificate, this latter period shall apply. Unless otherwise specified in the contract or the warranty certificate, the warranty period shall commence on the date of acceptance of the goods under par. 2.4. above. If the seller is obliged to ship the goods, the warranty period shall commence on the date of acceptance of the goods under par. 2.4. above, at the point of destination. The warranty period shall be interrupted for the period during which the Purchaser is unable to use the goods due to a defect for which the seller is liable.

2.5.2. The person liable for the defects shall also bear the costs of transportation, disassembly and assembly.

2.5.3. If the supplier failed to perform a repair or deliver replacement goods after written notification of the occurring defects and expiry of a reasonable period of time, the Purchaser has the right to carry out the repair itself or obtain a replacement delivery at the supplier's costs.

## 2.6. **Safety measures**

- 2.6.1. The supplier is responsible for all safety measures for the protection of the assembly personnel and for working equipment at the workplace provided by the supplier. The supplier is obliged to ensure observance of all working regulations, regulations on health protection and safety regulations that may be applicable to its assembly personnel and shall be liable for all arising claims. This liability covers also its subcontractors. The bodies appointed by the Purchaser for supervising the assembly are not responsible for checking the safety measures stipulated by law but are only liable for technical and business checks and acceptance of the supplied assembly. Instruments and protective equipment provided by the Purchaser may be used by the supplier only after they are carefully tested.

Odry, 1st August 2014