

## **General Terms and Conditions for the Purchase of Goods, Status 02/2009**

The present General Terms and Conditions for the Purchase of Goods shall be exclusively applicable within the privity of contract and for all legal relationship and transactions between ourselves and the Supplier or other contractors (hereinafter jointly called "Supplier"). They shall also apply for our future contracts with the Supplier, even where they are no longer explicitly agreed. Deviating conditions set out by the Supplier are objected to and shall be applicable only if explicitly assented by us in writing for each individual transaction. They shall not become a part of the content of the contract even if we are aware of such conflicting conditions of business and accept deliveries of goods of Supplier without raising objection. In the event of partial deviation from these General Terms and Conditions for the Purchase of Goods or in the event of a clause being wholly or partially invalid, this shall have no effect on the validity of the remaining part of the clause or of the other conditions.

### ***I. Order***

1. All agreements and orders shall be regarded as having been placed only after it has been set out in writing and signed by us. Orders placed verbally, by telephone or via other means of communication (i.e. multimedia) shall be binding on us only if subsequently confirmed in writing. Any drawings specified by us in individual cases, including tolerance indications, shall be binding. On acceptance of the order, the Supplier recognises that he has obtained information on the nature of execution and the extent of his required performance by inspection of the existing plans. In the event of evident mistakes, misprints or calculation errors in the documents, drawings and plans submitted by us, they shall not be binding on us. Supplier is required to inform us of any such errors, so that our order can be corrected and renewed. The same applies in the event of missing documents or drawings
2. Our orders shall be binding for 10 working days, after which we shall be entitled to withdraw them.
3. Deviations in quantity and quality from the text and contents of our order and subsequent contractual changes or additions and supplementary agreements shall not be regarded as agreed until we have explicitly confirmed them in writing.
4. Illustrations, drawings, tools, samples, models, brands and designs or other documents, and finished products and semi-finished products which are provided by us or which are manufactured on our orders shall remain or become our property and may

not be delivered to or used by third parties without our explicit approval in writing. Unless otherwise agreed in individual cases, said items shall be returned to us without undue delay upon completion of the order, without specific request by us. Products manufactured or presented with such means of production, brands and designs may not be delivered to third parties without our explicit permission in writing.

### ***II. Delivery dates***

1. The agreed delivery dates and periods are binding. They run from the date of ordering. The goods must have been received at the receiving point indicated by us within the delivery period or by the delivery date. If delays are to be expected, the Supplier shall inform us of this without undue delay and obtain our decision with respect to maintenance of the order.
2. We are not required to accept delivery before elapse of the period for delivery.

### ***III. Delivery and packaging***

1. Delivery shall be effected at the expense of Supplier, free of charges for us, to the receiving point indicated by us. If by way of we have to bear the freight charges, Supplier shall select the type of packaging, the transport route and the transport company in accordance with our specifications, or otherwise the transport and delivery mode which is most favourable to us.
2. Independent of the agreed cost of transport, passing of risk shall always take place upon acceptance by the receiving point indicated by us.
3. The packaging is included in the price. If by way of exception any other agreement is made in this respect, the packaging shall be charged at cost. The Supplier shall choose the packaging indicated by us, and shall ensure that the goods are protected from damage by the packaging. In the event of return delivery, at least two thirds of the calculated value shall be credited.
4. The supplier is obliged to take back at its own cost all packaging material required for the transport, shipment or sale of the goods at his own expense, either immediately after delivery or, if it is impractical, without delay the following delivery.

### ***IV. Documentation***

1. Invoices, delivery notes and packing notes shall be attached to each shipment in duplicate. These documents must include:



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- Order number
  - Quantity and quantity unit
  - Gross, net and if applicable calculation weight
  - Article description with our article number
  - Remaining quantity in the case of partial shipments.
2. For freight shipments, advice of shipment shall be communicated to us separately on the day of shipment.

### ***V. Prices, invoicing and payment***

1. Unless otherwise explicitly agreed, the prices indicated in the order shall be fixed prices including the statutory value added tax, packaging and transport.
2. A separate invoice shall be issued for each order. For payment within 45 days after receipt of the respective Supplier invoice, we shall be entitled to deduct 3% discount, otherwise the invoice amount shall be payable and due net cash 60 days after the invoice date. If we do not respond to a Supplier invoice, this shall not be deemed to be recognition of the respective invoice, even if the Supplier has explicitly asked us to make a declaration to this effect. In the event of delay in delivering the Supplier shall pay a lump-sum compensation in damages amounting to 1 % of the value of goods of the respective order per commenced week of the missed deadline, on the whole, however, at most 5 % of the value of goods unless the Supplier is not responsible for the delay and/or the Supplier can prove a minor damage or lack of damage.
3. Receivables of the Supplier or Service Provider from us may be assigned to third parties only with our written permission. Payments will be made to Supplier only, and liberate us from our payment obligation.
4. We retain the right to pass on all costs which arise to ourselves or any other member of the SAINT-GOBAIN group.

### ***VI. Warranty***

1. Supplier guarantees that the goods, including their presentation and marking, shall correspond to our indications or to the indications included in the information provided by the Supplier. Our order shall be executed properly and correctly in accordance with the respective state of the art. Inspection certificates and safety data sheets must be made available before delivery. Changes to procedures must be agreed in writing. The rules for burden of proof set out in Art. 476 BGB (German Code of Civil Law) shall be applicable for all deliveries of goods.
2. Complaints of defect shall be made in due time. Insofar, Supplier waives to raise an objection according to § 377 HGB (German Commercial Code)

3. The respective limitation period shall be interrupted by written complaint of defect.
4. In the case of faults or quality deviations we retain the right to require rectification of the fault, additional supply, price reduction or cancellation of the contract. We retain the right to compensation due to non-fulfillment of the contract conditions

### ***VII. Liability***

1. Our liability with respect to death or injury to any person is subject to and governed by the provisions of the law applicable.
2. We shall be liable in the event of intentional or grossly negligent behaviour, or in the event of violation of a primary contractual duty only up to the amount of foreseeable damage.
3. The foregoing provisions of this Article shall also apply to our personnel and agents to the extent that any of the above are directly or indirectly involved.
4. Further or other claims or rights, regardless of the respective legal theory, are excluded. This applies particularly with regard to tortious acts in the meaning of §§ 823, 831 BGB.
5. For faults in the product which are due to fault on the part of the Supplier, Supplier shall indemnify us for any resulting product liability to the extent that he would himself be directly liable.

### ***VIII. Industrial property rights***

The Supplier warrants that the use of the goods obtained under this Purchase Order does not infringe any industrial property right of third parties. The exceptions are violations of industrial property rights which take place due to our instructions or orders, where Supplier does not know or cannot know that industrial property rights are violated in such cases. The Supplier shall indemnify, defend and hold us harmless against any claims by third parties concerning violations of industrial property rights, raised against us in court or out of court, and shall upon request provide collateral to the amount of the payment claims made against us to a bank account to be specified by us.

### ***IX. Safe custody and property***

1. Any material furnished by us shall remain our property. It shall be stored separately as such, and may only be used for our orders. Supplier shall be liable for any decrease in value or loss, even without culpability. Objects manufactured using material supplied by us shall be our property in the state of production in which they are at any time. Supplier shall provide safe custody of such objects for us; he store them with due

care and diligence; the purchase price includes costs for safe custody of objects and materials kept for us.

2. If the Supplier declares that the goods shipment is effected under retention of title, we recognise only simple retention of title pursuant to Art. 449 BGB.

### ***X. Confidentiality***

Supplier shall treat models, samples, dies, edit formats, drawings and other workshop facilities, our orders and all commercial and technical details furnished or paid by us confidential. The Supplier, or his employees, shall not use any information acquired or developed in the course of this contract for any purpose not authorised in writing by us. The Supplier is required to exercise the utmost discretion during the performance of the contract. The Supplier shall be liable for any breach of confidentiality or any indirect disclosure which could vitiate our interests.

### ***XI. Right of withdrawal***

In case of cessation of deliveries or insolvency of the Supplier we shall have the right of withdrawal from the unperformed part of a contract.

### ***XII. Meeting Applicable standards on the protection of human health and environment***

Caring for the environment and respecting health and safety in the work environment are part of the customer's Principles of Conduct and Action.

The supplier undertakes to meet all applicable standards regarding chemicals sold to customers, regardless of whether these substances are supplied to be used on their own, in preparations, or in articles.

The supplier especially undertakes to comply with the REACH European Regulation n° 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemical substances

Therefore, in accordance with the European Regulation REACH, if the substances provided within the framework of the present contract have to be registered with the European Chemicals Agency, the supplier guarantees in particular to the customer that the substances have been pre-registered and/or will be registered within the deadlines set by the European Regulation REACH, the aforementioned registration having to cover all use by the client of these substances.

In the event that all or part of the substances supplied to the customer are subject to authorisation or restriction, the supplier undertakes:

- with regard to substances subject to authorisation, to supply only those substances duly authorized for the uses the customer intends to make of these substances,
- with regard to substances subject to restriction, to supply only those substances which comply with the restriction measures imposed by European Regulation REACH,
- to notify the customer of any change in regulation applicable to these substances (especially in the case of a ban on their uses) and of any substitution feasibility for such substances.

The substances, whether supplied to be used on their own, or included in preparations, or articles, will have to be delivered:

- in packaging compliant with standards applicable to the labelling and packing of chemicals such as those set by the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) established by the United Nations,
- accompanied by sufficient information enabling the customer to use them in full safety. Whenever required by the regulations in force, the supplier undertakes to provide the customer with the corresponding material safety data sheets (MSDS). The MSDS should comply with the applicable regulations and be identical, irrespective of their linguistic version and/or of the country of delivery of the substances. The supplier will have to update MSDS on a regular basis and will have to communicate these updates to the customer. In addition, the supplier undertakes to notify the customer if the products supplied contain any substance of very high concern, as defined by the European Regulation REACH, above a 0.1% weight by weight.

The supplier undertakes to give the customer at least a six (6) months notice if, in the course of the present contract, he intends either to modify the ingredients and/or technical characteristics of the substances supplied, or to stop selling them. In such an event, the supplier will be liable towards the customer of all financial consequences borne by the customer due to



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the modification or withdrawal from sale of the substances.

### ***XIII. Miscellaneous***

1. If any clause of an agreement which has been concluded in accordance with these Standard Terms and Conditions for the Purchase of Goods becomes ineffective this does not affect the validity of the remaining provisions of the agreement. The ineffective provision is to be replaced by another such provision which comes closest to the objective of the ineffective provision.

2. German law shall be applicable in any respect (excluding the 1980 UN Vienna Convention on Contracts for the International Sale of Goods).

3. The place of fulfilment for claims for payment shall be the address of record, for goods deliveries the destination specified by us.

4. Address of record shall be the place or jurisdiction for all disputes arising from the contractual relationship with the Supplier, where Supplier is a company, a legal entity under public law, or a government-owned special asset. The same applies to legal action relating to bills of exchange or cheques. We shall also be entitled to initiate legal action at the place where the Supplier has his registered office.

5. The agreed terms and conditions shall be null and void in the case of any default of delivery, transfer or acceptance or any other disturbance caused by acts of God, strike, acts of civil or military authorities or other unpredictable, unavoidable or disastrous events for the duration of such event.

6. This order is placed under the conditions that its execution conforms to the current regulations for accident prevention and safety at work.

#### **7. RESPONSIBLE DEVELOPMENT**

The Supplier is aware that the SAINT-GOBAIN Group supports the UN Global Compact and has adopted General Principles of Conduct and Action available on the Internet site: <http://www.saint-gobain.com>. The Supplier declares that he has read these Principles.

The SAINT-GOBAIN Group notably expects its suppliers:

- to make sure that they have control of environmental risks related to both their processes and the products they use whether in their activity or when intervening on Group sites.
- to respect employee rights regardless of the country in which they operate.
- to refrain, even if permitted under applicable local legislation, from resorting to any forced or compulsory labor or to any child labor, either directly or indirectly

or through sub-contractors, in the course of their production processes or when providing services or when intervening on Group sites.

- to provide their employees with the best possible conditions of health and safety and to observe, during their interventions on Group sites, all applicable health and safety rules.

SAINT-GOBAIN Diamantwerkzeuge GmbH & Co  
KG, status 02/2009