

## **GENERAL TERMS AND CONDITIONS OF PURCHASE OF SEMPERTRANS BELCHATOW SP. Z O.O.**

### **1 GENERAL PROVISIONS**

#### **1.1 Conclusion of a transaction**

- 1.1.1 Unless otherwise agreed all deliveries and services ordered by us shall be subject to these General Terms and Conditions of Purchase ("GTCP"). Terms and conditions of delivery or other contract form sheets of the supplier shall not be applicable even if we do not expressly object thereto.
- 1.1.2 Purchase orders shall be acknowledged by means of the enclosed reply letter. If we do not receive an acknowledgement of order which fully corresponds to our purchase order within a period of 14 days, we shall be entitled to cancel the purchase order. If we do not cancel the purchase order, the supply agreement with us shall nevertheless exclusively be concluded according to the scope and on the terms and conditions of our purchase order.
- 1.1.3 If the supplier has submitted an offer, the contract shall be concluded as of dispatch of and according to our purchase order.
- 1.1.4 All agreements and all our statements shall require written form in order to be valid. This requirement shall not refer to purchase orders placed only orally or by fax that include a purchase order number and are subsequently acknowledged in writing; such oral / faxed orders shall take effect as of receipt of the order acknowledgement.
- 1.1.5 All trade clauses stated in supply agreements shall be understood within the meaning of the Incoterms applicable from time to time unless some other meaning is expressly agreed in writing.
- 1.1.6 The terms "delivery" and "supply" as used in these GTCP shall include both deliveries of goods and other items (in particular energy and software) and the provision of services and the granting of rights. Wherever the term "goods" is used in these GTCP, the GTCP shall also apply to all other types of deliveries mutatis mutandis.

#### **1.2 Type and period of delivery**

- 1.2.1 Deliveries shall be handled according to our instructions. Goods shall be packed properly. Deliveries shall be in compliance with the regulations on safety, packaging and dangerous goods applicable in Poland; the related papers (e.g. safety data sheets and test certificates) shall be enclosed. With respect to utilisation and disposal of means of packaging our directives and rules shall be observed and co-ordinated with us, if necessary. Unless otherwise agreed deliveries shall be made DDP (named place of destination) according to the Incoterms.
- 1.2.2 Insurance of the goods against transport damage or other damage shall be taken out by the Supplier. This can be at our cost only if expressly agreed.
- 1.2.3 Partial deliveries may only be made with our consent.
- 1.2.4 Delivery periods shall commence on the date of our purchase order.
- 1.2.5 The Supplier shall not be entitled to any compensation whatsoever if Sempertrans Belchatow terminates the agreement with one month notice because of internal measures or rearrangements, e.g. if he discontinues production of the products, alters specifications of the products or the production process.

#### **1.3 Payment**

- 1.3.1 All prices shall be fixed prices unless deviating provisions have been agreed.
- 1.3.2 Payments shall be deemed neither an acknowledgement of proper delivery nor a waiver of any rights whatsoever.

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**1.4 Untimely delivery**

- 1.4.1 If the supplier is in default, then 14 days after default started we shall be entitled to cancel the contract with immediate effect and without having to announce our cancellation of the contract and without having to grant a period of grace. If a time bargain has been agreed, the contract shall be terminated upon non-observance of the agreed fixed date unless we demand performance of the contract within 14 days.
- 1.4.2 If the delivery date is not observed, the supplier shall pay a contractual penalty in the amount of 0.5% of the total price for each commenced week of delay but not more than 5% of the total price, irrespective of fault. If the contract is terminated due to the default of the supplier or if the supplier is no longer able to render performance of the contract, a contractual penalty of 5% of the total price shall be paid in any case.

**1.5 Defective delivery**

- 1.5.1 Unless expressly agreed otherwise all goods delivered shall be new (brand-new) and of top quality (1A goods or agreed type of goods), state-of-the-art and suitable for their designated purpose.
- 1.5.2 If we at the acceptance test have determined values regarding the supply quantity, measurements, weights and quality, such values shall be relevant unless the supplier proves them to be incorrect. Our right to claim for defects or to raise any other claims at a later point in time shall not be excluded by the acceptance test.
- 1.5.3 The supplier shall be responsible for the constant quality of the goods delivered on the basis of his quality assurance system maintained according to Clause 1.7.6 of these GTCP. That means that as soon as the supplier has been admitted as a supplier of Sempertrans Belchatow, Sempertrans Belchatow will, in principle, no longer inspect the incoming goods. Accordingly we are not obliged to test or inspect the goods before or after delivery or to give notice of defects within a reasonable time after delivery. Defectiveness of the goods delivered may be claimed notwithstanding that they have been used for quite a long period of time or have been processed. The warranty claims shall be deemed to have been asserted in time if we have dispatched a written notice of defects within the warranty period.
- 1.5.4 If defective goods have been delivered, we shall have the option for a period of three years as of delivery to cancel the contract or to demand a price reduction or to demand that the defect be repaired or that non-defective goods be delivered. Improvement or substitute delivery shall be effected immediately and at the supplier's cost. In urgent cases we shall be entitled at the supplier's cost to repair the defect ourselves or to have the defect repaired.
- 1.5.5 If we cannot use the items delivered owing to their defectiveness, the supplier shall have to pay a contractual penalty as provided for in Clause 1.4.2 until the defect is repaired. If we cancel the contract, a contractual penalty of 5% of the total price shall have to be paid in any case.

**1.6 Business secret**

Our purchase orders and all related commercial details and technical details shall be treated by the supplier as a business secret. The supplier may only refer to the existence of business relations with us if we have agreed thereto.

**1.7 Safety provisions and other provisions**

- 1.7.1 The goods delivered shall be in compliance with all statutory provisions (laws, regulations, standards, etc.) applicable in Austria and at the place of delivery and at the place where the goods delivered will be used, in particular safety regulations, accident-prevention rules, standards regarding CE conformity and labelling, industrial safety regulations, environmental regulations, health standards, machine guarding regulations as well as regulations of electrical engineering.
- 1.7.2 If insolvency proceedings of any kind are opened in respect of the supplier after the contract has been concluded, we shall be entitled to rescind the contract immediately.
- 1.7.3 The supplier shall be liable for the fact that the goods delivered are not encumbered with rights of third parties and that no patents, proprietary rights or other rights of third parties are violated in Austria or abroad by delivery or use of the goods. The supplier shall indemnify and hold Semper-

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trans Belchatow harmless from and against all claims of third parties arising out of a violation of this obligation.

- 1.7.4 The supplier shall not be free to have contractual services for Sempertrans Belchatow provided by third parties in whole or in part unless Sempertrans Belchatow expressly agrees thereto (no sub-contracting).
- 1.7.5 An assignment of claims of the supplier under this contract shall require the written consent of Sempertrans Belchatow (non-assignment clause).
- 1.7.6 The supplier undertakes that the goods will be produced and delivered within the scope of a quality assurance system according to DIN ISO 9001 et seq. (or an equivalent system). The supplier shall provide Sempertrans Belchatow with evidence of the continuing existence of such a quality assurance system upon request.
- 1.7.7 If any provision of these GTC or any contractual agreement between Sempertrans Belchatow and the supplier is held by any court or other competent authority to be void, illegal or unenforceable in whole or in part, the other provisions of these GTC or the affected Agreement as well as the remainder of the affected provisions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal and enforceable provision that comes closest to the business purpose of the replaced provision.
- 1.7.8 Interpretation:
  - All references to 'we', 'us' 'our' and / or Sempertrans Belchatow and / or the purchaser are references to Sempertrans Belchatow Sp. z o.o.
  - All references to agreement by Sempertrans Belchatow entail agreement in writing signed by an authorised signatory of Sempertrans Belchatow.

**1.8 Place of jurisdiction, place of performance, applicable law**

- 1.8.1 For all legal disputes arising out of or in connection with the business relationship between Sempertrans Belchatow and the supplier (in particular in connection with supply agreements) the court having jurisdiction over the subject-matter and over 1010 Vienna, Austria, shall be the exclusive place of jurisdiction. Semperit shall, however, at its option also be entitled to sue the supplier also before the court having jurisdiction over (i) the place of the supplier's registered office or (ii) the location of any goods which may be the subject of dispute..
- 1.8.2 The place of performance with respect to payments shall be Rogowiec.
- 1.8.3 Unless mandatory statutory regulations to the contrary exist, the entire business relationship between Sempertrans Belchatow and the supplier (in particular the supply agreements concluded) shall exclusively be subject to Austrian substantive law. Applicability of UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements shall be excluded.

**2 ADDITIONAL PROVISIONS FOR FIXED ASSETS**

**2.1 Payments**

For payment of assembly invoices an assembly certificate confirmed by Sempertrans Belchatow shall be presented. The confirmed assembly certificate shall remain with Sempertrans Belchatow.

**2.2 Delivery**

The performance owed shall include, if necessary, a full set of workshop drawings in a format that can be copied and models or equivalent EDP data in a format that is acceptable to Sempertrans Belchatow. Sempertrans Belchatow shall be entitled to make use of such drawings to carry out modifications, repairs, produce spare parts, etc. and for that purpose to make available the drawings and models also to third-party companies.

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**2.3 Default**

If the supplier of fixed assets is in default, we shall be entitled to rescind the contract with immediate effect after a reasonable period. Reasonableness of the period shall depend on our interests and needs.

**2.4 Taking delivery**

Delivery shall be deemed taken if, after inspection, we declare that we accept the delivery. Such declaration shall be deemed no waiver of warranty claims or any other claims. If test operation is required to examine the delivery, the supplier shall carry out such test operation at his cost.

**2.5 Warranty**

2.5.1 The warranty period shall commence as of our written declaration of acceptance (certificate of acceptance).

2.5.2 In the case of warranty claims the supplier shall bear any and all costs of transportation, dismantling and installation as well as the costs of disposal and other costs incurred due to statutory regulations for disposal of the goods supplied or of packaging of the same.

2.5.3 If the supplier has failed to provide subsequent improvement or substitute delivery after a written notification of the defects that have occurred and expiration of a reasonable period, we shall be entitled at the cost of the supplier to make the improvement or obtain a substitute ourselves.

**2.6 Safety measures**

The supplier shall be totally responsible for all safety measures to protect the assembly staff and aids made available by the supplier. The supplier shall ensure that all types of police regulations, accident-prevention regulations and safety regulations that may be relevant to his assembly staff be complied with and he shall be liable for all claims arising therefrom. This liability of the supplier shall also extend to ensuring the same compliance by subsuppliers of the supplier. The staff used by Sempertrans Belchatow to supervise assembly work shall not be liable for monitoring compliance with the statutory safety regulations but merely for taking delivery and acceptance of assembly work with respect to technical and commercial aspects. Equipment and means of protection provided by Sempertrans Belchatow may only be used by the supplier after having thoroughly inspected them.