

Terms and Conditions of Purchase of Ensinger Sintimid GmbH

I. General

1. To all procurements of Ensinger Sintimid GmbH, Ensingerplatz 1, A-4863 Seewalchen, Commercial Register No 50434v, (hereinafter: „Ensinger“, „we“ or „us“) the following Terms and Conditions of Purchase apply exclusively (hereinafter “Terms and Conditions of Purchase”). Our contracting party will be named hereinafter “supplier” or „contracting party“.

2. We order exclusively on these Conditions of Purchase nevertheless governing the purchase of goods, work performance or services or other things. This also applies to all future business relations.

3. We do not agree on the inclusion of conflicting general business terms and conditions of our suppliers. Our terms and conditions of purchase also apply if we do not object to the incorporation of our supplier's conditions in a particular case or if we accept delivery or services without reservation. Other provisions that deviate from these Terms and Conditions of Purchase – especially general terms and conditions of purchase of the contracting party – and any additions shall only become an integral part of the contract, if we expressly approve them in writing.

4. In the event of contradictions, the following shall apply in the order of precedence shown: special agreements, if Ensinger expressly approved them in writing; this Terms and Conditions of Purchase (as well as all terms referred to in this Terms and Conditions of Purchase); legal norms.

II. Technical Documentation, Moulds and Tools

1. Forwarding technical documents such as illustrations or engineering drawings to our suppliers the supplier is obliged to use these documents only for the production of our purchase order. The supplier is not allowed to submit these documents towards third parties.

2. We shall reserve the ownership and copyright of these documents. After transacting our order and at our request all documents must be immediately and exempt from charges returned to us.

3. We shall receive ownership of tools, products or software built to fulfil our orders and paid by us all or part. Supplier will store these products for us and only use them to perform our order. The products must be immediately and exempt from charges returned to us after transacting our order. Supplier will bear the costs of maintenance and repair. The destroy and/or disposal of these tools needs our written consent.

4. Suppliers are allowed to refer to our business relationship with us in their advertising only if we give express permission in writing.

III. Confidentiality

1. The supplier shall keep confidential all business or technical information made accessible by our business relationship.

2. The supplier hereby irrevocably undertakes to keep all industrial and commercial secrecy of Ensinger strictly confidential, that Ensinger made accessible to supplier or Ensinger provided to supplier or supplier became known due to commercial relationship or contact to Ensinger. Supplier will not make such information accessible to third parties without prior consent of Ensinger. Furthermore the supplier undertakes to use the confidential information only for the purposes within the concluded contracts.

IV. Bid and Purchase Order

1. Supplier has to refer in his bid to amount and condition of our purchase order. In the case of deviations supplier has to indicate formally.

2. Offers made to Ensinger shall be free of charge, regardless of what preparations were necessary for these.

3. All offers have to be binding for at least one month if no other specifications of Ensinger obtain.

4. Orders are only legally binding to Ensinger, if they are in writing and have been signed by Ensinger. An order is also deemed to comply with the written form when made by fax.

5. Impartible overall performances (“unteilbare Gesamtleistungen”) are agreed.

6. Supplier has to accept our purchase order within 7 working days otherwise we are not bound to our order. Supplier has to reject delivery schedules within 3 working days after receiving otherwise they are binding.

V. Prices

1. Prices are fixed prices the whole delivery period unless stipulated otherwise. The fixed prices cover all services necessary for fulfillment of the contract, especially any packaging, additional costs, custom duties, transport, and other costs of delivery etc. The supplier shall bear the transport risk until delivery beyond the first door that can be locked on Ensinger's site or at the agreed place of delivery (Incoterms 2010 – „DDP“). VAT must be separately identified, otherwise it will be considered included in the price.

2. In cases where the supplier is responsible for erection or assembly and/or commissioning no other provisions have been agreed upon in writing, the supplier shall bear all incidental costs, such as travel expenses and provisions of tools.

VI. Invoice, Payment Terms

1. Invoices have to be sent by separate mail. Each order is to be billed separately. Invoices have to include and point out our purchase order number, order date, number of supplier and our item number.

2. In case of payment within 14 days upon receipt of the goods as provided in the contract and receipt of a proper and auditable invoice Ensinger is entitled to a cash discount deduction of 3 %. Upon otherwise expressly agreed the payment term is 30 days after receipt of the invoice or any other document that triggers the payment term.

3. We shall be entitled to claim statutory setoff and retention rights.

VII. Delivery Date and Delay in Delivery

1. Delivery dates specified in the order are binding. The receipt of the goods by us is the determining factor for having met the date of delivery. Partial deliveries are precluded as a rule, unless we expressly agreed to them. We are entitled to require partial deliveries.

2. We are entitled of our own choice to withdraw from the contract all or part or claim damages.

3. We are entitled to refuse premature deliveries and to return to the supplier at his own costs or to store the delivery at a third party. Nevertheless pecuniary claim shall become due at the agreed delivery date.

4. We are entitled to change the agreed delivery dates if the change is necessary to ensure a failure-free operation in our plant and the change is reasonable for the supplier.

5. The supplier shall inform us without any delay if circumstances will arise that will endanger or will make the compliance of delivery date impossible.

6. On-site deliveries are only possible at previously arranged times.

7. In case of delivery delays we shall be entitled to impose a contractual penalty of 1% for each commenced week of delay, but not more than total of 10% of the order value. The right to assert additional damages shall be reserved. The supplier shall have the right to furnish evidence that no or only slight damage was caused. The contractual penalty will be deducted from damage.

8. Force majeure, labour disputes, government measures and other unpredictable, unavoidable and serious events shall release the contracting parties from their compulsory treaty indemnity for the length of their continuance and in the extent of their disruptions.

VIII. Place of Performance, Passage of Risk, Acquisition of Ownership

1. The place to which, according to the order, the goods have to be delivered or where the service is to be performed shall be the place of performance. Place of performance for our payments is our registered office.

2. On supplier's account and supplier's risk the delivery shall be properly packed and made, free “place of delivery”, to the address named by us and/or performed there. The risk of accidental perishing or deterioration of delivery will pass on to us only with receipt of delivery by us at the place of performance or after final acceptance of the delivery, whichever comes later, even if we have agreed to the freight charges.

3. Supplier has to maintain a transport insurance for the goods and properly pack them. Supplier has to pay compensation for any damages that occur prior to the acceptance by Ensinger due to insufficient packaging.

4. With the passage of risk at the place of performance or with delivery to a forwarding agent appointed by us we shall acquire ownership of the goods without reservation of any rights for the supplier.

IX. Declaration of Release (“Entpflichtungserklärung”)

1. If supplier is participating in a nationwide packaging-collection system in Austria (e.g. ARA – Altstoff Recycling Austria AG), the offer, each delivery note and each invoice shall contain the following legally binding declaration: „The packaging of all mentioned goods is released via license number 10650. Additional charges or costs, such as deposit or costs of disposal, will not be accepted by Ensinger.“

2. If supplier fails to provide a declaration of release, supplier has to collect and take back the packaging. If the supplier fails to fulfil this obligation, Ensinger is entitled to have the packaging removed by third parties and to claim reimbursement of the expenses accruing therefor by the supplier.

X. Examination for Fault and Warranty

1. The acceptance is subject to an examination for faultlessness, especially also for correctness, completeness and fitness. Sec 377 UGB (Austrian Commercial Code) shall not apply.

2. The legal stipulations regarding warranty shall be applied, unless other provisions are provided below.

3. In case of a warranty claim Ensinger shall have the right of choice with regard to the manner of warranty performance (repair, replacement, price reduction or redhibition).

4. In the event the supplier does not immediately begin with the correction of the defect after our request to correct the defect, in urgent cases, especially to ward off imminent risks or to prevent major damage, we are entitled to undertake such correction ourselves or have it undertaken by a third party at the expense of the supplier.

5. In case the supplier does not transfer title free of third parties rights, the supplier also holds us harmless against any alleged third party claims.

6. The supplier shall assume the costs if as a result of the defective supplies or services we incur costs, especially transportation, labour, material costs or costs for incoming inspection in excess of the customary extent.

7. If we take back products built and/or sold by us as a result of defectiveness of supplies or services, or if therefore our customers reduced the purchase price or claims of what ever nature are made against us on that account, we reserve the right to request reimbursement from the supplier, whereby an otherwise required notice is not needed to assert our warranty claims.

8. Any exclusions or limitations of liability of the supplier, especially with regard to warranty or indemnification, will not be accepted.

XI. Product liability

1. Supplier shall be liable according to the provisions of the Austrian Product Liability Law (“Produkthaftungsgesetz”) for all damages. Supplier will protect, indemnify and hold harmless Ensinger from and against all claims based on the failure of the supplied goods.

2. If supplier knows or becomes aware of defects (errors) of the supplied goods – whether from internal sources or third parties – supplier is obliged to immediately inform Ensinger in writing containing the concerned products, a description of the failure and any impacts of the failure. In case of defects/errors/deviations of the supplied goods Ensinger is entitled to carry out a product recall at the costs of the supplier. In all these cases supplier is obliged to indemnify and hold harmless Ensinger from all losses and additional costs including costs for corrective actions and any modifications in the production process and any loss of profits, regardless of fault.

XII. Industrial Property Rights

1. The supplier guarantees that neither his delivery nor its use infringe upon industrial property rights or other rights of third parties nor violate legal or official regulations of whatever kind.

2. By fault supplier assumes full responsibility for, indemnifies and holds us harmless from and against any liabilities any third party claims arising out of the infringement of industrial property rights. The supplier's obligation of indemnification shall also cover all expenses arising from or in connection with claims by third parties.

3. The contracting parties shall inform each other immediately in the event that a risk of infringement or a supposed infringement become known. The parties shall give the opportunity to controvert all claims jointly.

XIII. Quality Assurance

1. The supplier shall during the entire business relation maintain a quality management system according DIN EN ISO 9000 ff. that ensures the proper quality of deliveries, monitor the system by internal audits in regular intervals and promptly take action if any deviation has been detected. We shall have the right to inspect the supplier's quality assurance system with prior notice. At our request the supplier shall permit us to examine certification and audit reports as well as inspection procedures including all test records and documents relevant to the delivery.

XIV. Protective Regulations, Instructions and Declarations

1. The supplier shall send us free of charge a construction handbook in German language in hard copy and in electronic form, a threat analyses/threat evaluation and an assembly instructions for a partial machine as a minimum.

2. The supplier guarantees that the delivery items comply with all statutory laws for accident prevention and safety at work and the accepted rules for working practices and technical safety not only in the supplier's home country but also in Austria or the country where the machine is to be used as provided between supplier and us. The supplier shall guarantee that the delivery items comply with the respective EU directives and all enacted national acts, directives based on these EU directives and harmonised standards in their respective legal version. Supplier guarantees that an evaluation process for conformity was carried out according to the directives. Supplier assumes full responsibility for, indemnifies and holds us harmless from and against all liabilities and third party claims arising out of the non-observance of such directives. Our title of release from liability is independent from supplier's fault.

XV. General Clauses

1. Without our previous written consent, which shall not be unreasonably withheld, the supplier shall not be entitled to assign his receivables to third parties or to have such receivables collected by third parties. Even if the supplier assigns his receivable against us contrary to the first sentence to a third party without our consent, the assignment remains valid. Regardless of the assignment we may choose whether payment is made to the supplier or the third party.

2. Any offset of counterclaims against our claims, irrespective of what type, is excluded.

3. Any placed order must not be transferred to subcontractors, whether in parts or fully, without our consent.

4. All legal transactions, especially purchase agreements and transactions that underlie these Terms and Conditions of Purchase, as well as all related claims, rights and disputes including the interpretation and reading of terms of a contract and issues regarding the binding legal agreement of these Terms and Conditions of Purchase are exclusively subject to Austrian law excluding the conflict-of-law rules and the Convention on Contracts for the International Sale of Goods (CISG).

5. The courts of Linz shall have exclusive jurisdiction over any disputes out of or in connection with the contractual relationship.

6. If one provision of these terms and conditions and of additional agreements should be or become ineffective, this will not affect the validity of the terms and conditions in other respects. The parties shall agree upon a provision to replace the ineffective provision that reflects as closely as possible the economic intent of the previous provision.

7. These Terms and Conditions of Purchase are written in German and English language. In case of doubt the German version shall prevail.