

## General Terms of Sale and Delivery

### **1. CONTRACTS**

- 1.1** Every agreement entered into by SCHOELLER-BLECKMANN EDELSTAHLROHR GmbH (hereinafter referred to as "SELLER" or "SBER") with any of their purchasers (hereinafter referred to as the "PURCHASER") of its goods and the receivers of its services are exclusively subject to these terms, unless otherwise agreed in writing.
- 1.2** In the event of any discrepancy between these General Conditions of Sale and any other purchasing conditions of the PURCHASER, those established herein shall at all times hold precedence, unless previously confirmed by the SELLER in writing.
- 1.3** The SELLER's offers shall only become binding upon written confirmation of the order. Agreements, undertakings and declarations of all kinds must be made in writing in order to be legally valid. Any waiver of the written form must be formalized in writing.
- 1.4** Any variations in quantities outside the standard tolerances must be specifically agreed in writing in the relevant order for their validity. The quantities binding for the invoiced amounts shall be those determined through the calibrated measurement taken by the SELLER.
- 1.5** Cancellation, suspension or deferral of the delivery date shall only be possible when this is mutually agreed by SELLER and PURCHASER.
- 1.6** In the event of cancellation, the SELLER will be indemnified on the basis of the value of the work in progress and finished products and is entitled to charge the following cancellation fees to the PURCHASER:
- 20% of the value of the cancelled portion if cancellation occurs 15 weeks prior to Production Start;
  - 60% of the value of the cancelled portion if cancellation occurs 14 - 8 weeks prior to Production Start;
  - 100% of the value of the cancelled portion if cancellation occurs 7 - 0 weeks prior to Production Start or if material is already in progress.

"Production Start" shall be at starting of hollows (mother tubes) manufacturing.

- 1.7** In the event of suspension or deferral of the delivery date by the PURCHASER longer than 30 days from the original Delivery date, the SELLER is entitled, to duly invoice the packed finished Products and charge ONE PER CENT (1 %) per month of the ordered value item as storage costs to the PURCHASER.
- 1.8** The last valid version of INCOTERMS shall be applied whenever stated in the confirmation of the relevant order.

### **2. ACCEPTANCE AND DELIVERY**

- 2.1** Delivery periods and other terms commence on the date of confirmation of the order by the SELLER. Notwithstanding the foregoing, in the particular case of Pre-Production Meeting (PPM), it will take place during the following calendar week subsequent to the order's confirmation. Failing this, the SELLER shall not be liable for any subsequent delay of the delivery.
- 2.2** Partial deliveries are admissible.
- 2.3** The SELLER's delivery obligation will also be deemed fulfilled when the PURCHASER is notified that the shipment is being prepared or that it has been accepted, even if for reasons that are of no fault of the SELLER, the goods are not accepted, collected or shipped on time.
- 2.4** In the event of a default of acceptance, the SELLER reserves the right to withdraw from the contract. If this default is caused culpably by the PURCHASER or the persons employed by him/her to fulfill the obligations, the PURCHASER shall indemnify the SELLER for all damages and loss (including consequential damages and loss of profits).
- 2.5** If the PURCHASER gets into default of acceptance or if, in the case of a framework contract, the relevant order is not affected within FOURTEEN (14) calendar days following the agreed order date, the SELLER is entitled to ship the goods at the risk and expense of the PURCHASER at the SELLER's discretion, or optionally to store them (all storage and financial costs are to be assumed by the PURCHASER).
- 2.6** At this point in time, the goods are considered to be delivered as per the agreement in every respect and the risk is transferred to the PURCHASER, if it has not already been transferred. The PURCHASER must immediately proceed with the corresponding payments, which are due for the case of delivery, or which are caused by the delivery itself.

### **3. SHIPMENT AND TRANSFER OF RISK**

- 3.1** All goods shall be regarded as shipped under proper conditions, and damage shall only be considered to have occurred during transportation until proven otherwise. If, as per the applicable INCOTERM, the damage has occurred in the area of risk taking of the SELLER, the PURCHASER must uphold the SELLER's rights before the carrier or its transport insurer with the otherwise loss of possible claims against the SELLER.
- 3.2** For possible loss, damage or confusion, the PURCHASER is obliged to immediately effect the official confirmation required for the assertion of claims for compensation on delivery of the goods and to pass it on to the SELLER.

### **4. PRICE AND PAYMENT**

- 4.1** All prices are understood as net, excluding taxes, duties, fees, charges etc. For domestic deliveries and services within the Austrian territory, the value added tax (turnover tax) is separately charged at the respectively valid rate."
- 4.2** The agreed place of payment is the territory of the SELLER and it will be regarded as such in the order confirmation. Payment will be made in cash transfer, free of charge to the SELLER. Set-off or retention in connection with asserted counterclaims is excluded. In case a counterclaim is under discussion after the due date of an invoice, a credit note can be issued by the SELLER until the matter is resolved. No invoice discounts made by the PURCHASER shall be allowed by the SELLER.
- 4.3** The PURCHASER shall make payment within the period established in the order confirmation.
- 4.4** In case of default in the payment of the invoices, the PURCHASER will be charged default interest and further applicable

charges notwithstanding further legal consequences. It is agreed that default interest shall amount to SIX PER CENT (6%) over the respective 3- month-EURIBOR valid at the point of time of the default in payment. Moreover, if there were outstanding deliveries pending invoicing, the SELLER shall be entitled to withhold the same, until the payment of the outstanding invoices plus the accrued interests, if any, is made by the PURCHASER.

- 4.5 The goods remain property of the SELLER and shall retain at all times their legal title, until the complete payment of the purchase price (including interest and fees) is made.
- 4.6 The PURCHASER undertakes to reimburse the fines and collection charges arising for the SELLER in case of default with the PURCHASER's contractual payment obligations.
- 4.7 In case the PURCHASER does not fulfil its payment obligations, the SELLER is entitled to execute still outstanding deliveries against advance payment only.

## 5. TAXES

All and any taxes which the SELLER may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby shall be for the account of the PURCHASER, and the PURCHASER shall promptly pay the amount hereof to the SELLER. Whenever any withholding taxes are payable by or on behalf of the SELLER, the PURCHASER shall timely pay such amounts to the appropriate governmental authority and, as promptly as possible, thereafter the PURCHASER shall send documentation sufficiently evidencing the payment, such as withholding tax receipt or other documentation as is reasonably requested by the SELLER.

## 6. OBLIGATION TO EXAMINE AND REPORT DEFECTS

- 6.1 The PURCHASER must inspect and examine deliveries of the SELLER immediately after delivery and shall notify the SELLER in writing, not later than the following calendar week, about any possible complaints, especially deviations from the order. This applies to material defects, short deliveries and/or differing deliveries.
- 6.2 Hidden defects as well as other deviations from the order confirmation, which are not immediately recognizable, must be asserted legally within TWELVE (12) MONTHS after delivery (of the goods) in any case.
- 6.3 On violation of the obligation for examination and to give notice of defects or on violation of assertion within TWELVE (12) months after delivery, all legal dispositive rights and claims for damage to the PURCHASER from a possible deviation of the delivery from the order are barred and excluded.

## 7. WARRANTY AND GUARANTEE

- 7.1 Unless proven otherwise upon delivery, the goods are considered delivered as per contract and fit for purpose. The warranty period or the period for an individually agreed guarantee shall be no longer than TWELVE (12) months starting from the delivery of the goods.
- 7.2 In case of defects, which should be perfectly verified and exclude the applicability of the goods, the SELLER accepts the warranty in such manner, that - at its choice - a) takes back the goods at the calculated price or; b) eliminates the defect or; c) replaces the goods free of charge with new ones, which correspond to those the order.  
The claimed goods are to be sent back on demand or after request for the approval of the SELLER.
- 7.3 Warranty claims going beyond this (i.e. as expressed in sections 7.1 and 7.1) from whichever title, are expressly excluded, as far as this is legally admissible.
- 7.4 Warranty does not cover the goods:
  - a) If after delivery, the goods are processed in a way that may deteriorate the characteristics of the material (e.g. thermal treatments, inaccurate welding, bending, coating) and/or
  - b) If there are material upgrades after the delivery of the goods -understood as substantial upgrades arising from tests and documentation - not previously accepted in writing by the SELLER.

## 8. FORCE MAJEURE

- 8.1 Events of force majeure and other circumstances beyond the sphere of influence of the SELLER, e.g. operational interferences, traffic interferences as well as difficulties in supplying factories with power, raw materials, fuels and auxiliary materials, acts of God, and further hindrances in production and delivery exclude claims for damages of the PURCHASER and entitle the SELLER either to extend the delivery deadline or to completely or partially withdraw from the contract.
- 8.2 Force majeure further includes strike, lockout, international economic blockades, trade bans imposed in those countries in which any of the Parties conducts business and further circumstances, which essentially complicate the delivery or even make it impossible, whereby it is of no importance, whether they occur to the SELLER or one of its sub-suppliers.
- 8.3 The SELLER undertakes to inform the PURCHASER promptly about the occurrence and the termination of such delivery hindrances.
- 8.4 In case of a justified withdrawal by the PURCHASER due to force majeure or similar delivery hindrances, the costs and charges accrued by the SELLER are borne by both contract parties by one half each according to equity.
- 8.5 If the circumstances under which the contract was concluded changed so considerably that it may rightly be assumed that the conclusion would not have taken place at all under the changed circumstances or at least at other terms, the SELLER is entitled to withdraw from the contract or to demand a change of the contractual provisions, e.g. payment in another currency, change of the delivery modalities, etc., which would take the changed circumstances into account.
- 8.6 The change of circumstances can also be justified with substantial changes in the economic and financial conditions of the PURCHASER.

## 9. LIABILITY

- 9.1 All claims for damages, especially those for consequential damage of defects against the SELLER or the persons employed in the performance of its obligations, are excluded as far as this is legally admissible and they are not based on willful misconduct or gross negligence by the SELLER.
- 9.2 The PURCHASER must provide proof of the presence of willful misconduct or gross negligence.
- 9.3 The PURCHASER relinquishes possible claims of recourses, which may arise against the SELLER due to their own liability

The PURCHASER undertakes to transfer relinquishments of damages and recourse as well as the handover obligation in case of reselling the goods to their PURCHASERS. In case of violation of this obligation, the PURCHASER shall indemnify the SELLER for all claims from third parties caused by that as well as against legal actions. Notwithstanding the foregoing, the PURCHASER undertakes to reach an agreement with the End User by virtue of which the SELLER could be involved from the beginning with the End User in order to provide, as the case may be, a proper and effective solution. The PURCHASER shall be fully liable if this clause is not complied with.

- 9.4 Claims for damages and recourses must be legally asserted against the SELLER within TWELVE (12) MONTHS (not processed material) upon delivery of the goods, otherwise they will not be valid. Claims under mandatory provisions of law pursuant to product liability or other legally compelling claims shall remain unaffected by this provision.
- 9.5 The total liability of the SELLER, irrespective of the legal grounds, is limited to a maximum of 100% of the items value of the individual damage-causing deliveries (to the exclusion of any surcharges for shipping, packaging, storage and customs). This limitation of total liability includes any reimbursement of expenses, claims to warranty or individually agreed guarantees. Claims under mandatory provisions of law pursuant to product liability or other legally compelling claims shall remain unaffected by this provision.
- 9.6 The SELLER will not be responsible in any case of the processing done to the goods after delivery that may deteriorate the characteristics of the material (e.g. thermal treatments, inaccurate welding, bending, coating, etc.).
- 9.7 The SELLER will not be responsible in any case for consequences derived of material upgrades -as defined in section 7.4.b above- if not previously accepted in writing by the SELLER.

## **10. INDEMNITY**

Should third parties assert a claim against the SELLER that is related directly or indirectly to acts and/or omissions of the PURCHASER (or his/her subcontractors or other persons attributable to him/her), the PURCHASER shall indemnify and shall accordingly hold the SELLER harmless from all loss, claim, damage or liability.

In the event of such a claim, the PURCHASER is also obliged to provide the SELLER with all necessary information and support in order to ward off such claims.

## **11. PROPRIETARY RIGHTS, DRAWINGS, SAMPLES**

- 11.1 If domestic or foreign proprietary rights of third parties (especially rights regarding patents, trademarks or samples) are violated with the utilization of drawings, samples or other remedies provided by the PURCHASER, the PURCHASER must indemnify the SELLER for all expenses resulting from that and indemnify the SELLER against legal action. This also applies for the execution of provisions about quality or further characteristics or for similar provisions of the PURCHASER.
- 11.2 For loss or damage of provided drawings, samples and the like, the liability of the SELLER for accident and slight negligence is excluded. The existence of gross negligence is to be verified by the PURCHASER. Insurance policies are taken out by the SELLER only, with the express order and at the expense of the PURCHASER.

## **12. RESERVATION OF PROPERTY RIGHTS**

- 12.1 Until the complete payment of the purchase price, interest and supplementary fees, the goods remain property of the SELLER. The PURCHASER must immediately notify the SELLER about a seizure or another laying claim on the goods by third parties and must take all legally required measures against the violation of the proprietary rights of the SELLER at its own expense.
- 12.2 Reselling the reserved goods is admissible with the express approval of the SELLER and against cash payment or a transfer of the proprietary right to the acquiring party only.
- 12.3 Any claims and rights from reselling, processing, confusion or other utilization of the reserved goods as well as possible claims arising from a damage to or a utilization of the reserved goods are assigned by the PURCHASER to the SELLER already in advance and he/she must also document this in the legally required manner. The PURCHASER will immediately pay out the collected amounts to the SELLER or keep them safe until then separately and on behalf of the SELLER.
- 12.4 As far as this is possible and in accordance with the respective applicable law, it is agreed that the reservation of proprietary rights is maintained regardless of possible processing or selling, provided that not all claims, also from other business deals of the SELLER, against this customer are fulfilled.

## **13. EXPORT RULES AND CONTROLS**

- 13.1 Products procured by the PURCHASER from the SELLER may not be used, resold, diverted, transferred or otherwise exported, directly or indirectly in any manner that would violate any of the applicable export rules and controls.
- 13.2 The PURCHASER undertakes to comply with these rules and controls and to indemnify and hold harmless the SELLER in any case of breach of those rules and controls.

## **14. DATA PROTECTION**

- 14.1 Both contracting parties undertake to comply with the relevant data protection regulations (especially General Data Protection Regulation (EU) 2016/679) and to take all necessary technical and organizational measures to safeguard the data they store.
- 14.2 The PURCHASER is informed about the fact that the SELLER will process personal data required for the purposes of soliciting and handling contractual relationships and maintaining business relationships and transmit the same to all group entities of Tubacex group or third parties involved in performance of the contract to the extent necessary to achieve the said objectives. Recipients of such data may also be located in countries with a lower level of data protection.
- 14.3 Further information on the processing of personal data can be found at <https://www.sber.co.at/dataprotection/> ("Data Protection Notice for customers and suppliers").

## **15. COMPLIANCE / CODE OF CONDUCT**

- 15.1 The contracting parties confirm to adhere to the following principles and practices:
- Compliance with law and regulations;
  - Respect for human dignity, personal freedoms, equal treatment (no discrimination); prohibition of child labour, forced

labour and illegal employment; freedom of association and collective bargaining; compliance with minimum wage and working hour regulations; providing safe working conditions;

- Prohibition of bribery, corruption and extortion, prohibition of direct or indirect acceptance of benefits for itself or third parties, prohibition of offering or procuring direct or indirect benefits;
- Compliance with trade control and anti-money laundering regulations;
- Refrain from anti-competitive practices;
- Compliance with social and environmental laws and regulations; compliance with 'Conflict Mineral' regulations (means ensuring that all goods and materials are purchased from legal and ethical sources);
- Accurate and complete recording of all business transactions in the books and records of the company and
- Compliance with information security and applicable data protection laws and regulations.

15.2 The PURCHASER implements rules for compliance according to this Section 16 and reasonably reviews its own and compliance of its suppliers and subcontractors.

15.3 The SELLER reserves the right to check compliance with the Codes of Conduct upon prior notice, including on the PURCHASER's premises, to a reasonable extent and thereby safeguarding the PURCHASER's legitimate interests. In the event that the Contractor contravenes any of the provisions of the Code of this Section 15, the SELLER shall be entitled to give notice of termination of all contracts and agreements (including orders and offers not yet accepted) with the PURCHASER without a period of grace and to claim compensation for any damage resulting therefrom.

## **16. RIGHTS OF WITHDRAWAL AND TERMINATION**

16.1 In addition to the individually stipulated rights of withdrawal, the SELLER explicitly reserves its rights as regulated by law or the contract to withdraw from or terminate individual business transactions or permanent supply relationships. Furthermore, the SELLER reserves the explicit right to prematurely terminate expressly agreed fixed term or indefinite supply relationships for good cause and at any time without observation of a term of notice.

16.2 Termination for good cause shall particularly apply in, but without limitation to, any of the following cases:

- Severe infringement of major contractual obligations which, despite a written warning, have not been remedied (if capable of remedy) or eliminated by the PURCHASER's within a reasonable period of time upon receipt of the written warning of the SELLER.
- Insolvency proceedings on the part of the PURCHASER, commencement of insolvency or compromise proceedings or proceedings equivalent in effect with respect to the assets of a contracting party or the dismissal of an application for the commencement of such proceedings for lack of assets to cover the costs.
- Major changes in the ownership structure/shareholding relationships of the PURCHASER that make it unreasonable for the SELLER, e.g. as a result of imminent loss of reputation or image, to continue execution of the contract.
- Major negative changes in the technical, legal or economic basic conditions/circumstances which make it no longer tolerable for the to adhere to the supply agreement (impaired balance between performance and consideration).

## **17. SALVATORY CLAUSE**

Should individual provisions of these terms of sale be or become completely or partially ineffective, invalid or unenforceable, this does not affect the effectiveness, validity or enforceability of the further provisions.

## **18. APPLICABLE LAW AND PLACE OF JURISDICTION**

18.1 These General Terms and Conditions of Sale and all legal relations between the SELLER and the PURCHASER shall be governed by the law of the Federal Republic of Austria to the exclusion of its conflict of law rules (especially ROM I+II, etc.) as amended. The applicability of the United Nations Convention on Contracts for the International Sale of Goods, CISG, of 11 April 1980 as amended, is explicitly excluded.

18.2 In case of lawsuits, both parties submit to the relevant competent courts of the domicile of the SELLER but the SELLER reserves the right to attend the Courts of the PURCHASER'S country. Alternatively, the contracting parties shall be entitled to refer any and all disputes arising out of or in connection with the performance of supplies and/or services to arbitration according to the Rules of Arbitration of the International Chamber of Commerce (ICC Rules), to be settled by one arbitrator appointed in accordance with the said Rules. The place of arbitration is Vienna, Austria. The language to be used in the arbitration proceedings is English (except the parties agree mutually that the language to be used shall be German).

Please note: Schoeller-Bleckmann Edelstahlrohr GmbH is a subsidiary company of Tubacex Group, organized and existing under the laws of Austria, 99,99% owned by Tubacex, S.A. -the controlling company of an industrial leading multinational Group founded in 1963 devoted to manufacturing seamless tubes in stainless steel and high-nickel alloys and super-alloys, with its head office in Llodio (Álava-Spain). Tubacex S.A. has its own General Terms and Conditions of Sale.