General Terms and Conditions of Purchase, November 2018 Version, of Seebach GmbH, Neckarweg 3-5, D-34246 Vellmar,
for Clients from the Industry, Craft, Business and Public Administration

§ 1 General – Scope of validity

(1) For all orders of Seebach GmbH (hereinafter referred also as "we"/"us"), the below Purchasing Conditions are valid exclusively. We do not recognize any conditions of the Supplier, which deviate from our Purchasing Conditions, unless when we have explicitly approved their validity in writing. Our Purchasing Conditions are valid also when we, having knowledge of conditions of the Supplier, which are conflicting with or deviate from our Purchasing Conditions, we accept unconditionally the delivery by the Supplier. The confirmation or execution of the order shall be deemed to constitute an acknowledgment of the Seebach GmbH Purchasing Conditions.
(2) Our Purchasing conditions are valid also for all the future transactions with the Supplier.
(3) Our Purchasing Conditions are valid only with respect to contractors according to § 310 section 4 BGB (German Civil Code).

§ 2 Offer, offer documents

(1) Our order is binding as early as we submit or confirm it in writing. Before accepting the order, the Seller must inform us about obvious errors (e.g. typing errors and calculation errors) and incompleteness of the order, including the order documentation, for the purpose of their correcting or correct completion; otherwise the contract is considered as not concluded.
(2) The Seller is obliged to confirm our order within 2 weeks in writing or, in particular, to carry out the delivery of the goods (acceptance) unconditionally.
(3) A delayed acceptance is considered as a new offer and has to be accepted by us.

§ 3 Time of delivery and delivery delay

(1) The delivery deadlines and the delivery quantities specified in the order are binding. The delivery deadline is the time of delivery to us. The Supplier is obliged to inform us immediately in writing when circumstances take place or become recognizable to him, from which it results that the agreed time of delivery can not be observed.
(2) If the Seller does not provide his service or does not provide it within the agreed time of delivery, or is in delay, then our rights are determined – in particular to withdrawal and compensation for damages – according to the legal regulations. The regulations in section 3 remain unaffected.
(3) If the Seller is in delay, we can – in addition to the other legal claims – request a lump sum compensation for our damages due to the delay in the amount of 1% of the net price per completed calendar week, but in total no more than 5% of the net price of the late delivered goods. We reserve the right to prove that we have sustained greater damages. The Seller reserves the right to prove that we have not sustained any damages or have sustained only significantly less damages.
(4) Partial deliveries are accepted only after an explicit prior agreement in writing. In the case of agreed partial deliveries, the remaining residual quantity must be specified, respectively, with the actual delivery. The deliveries can take place up to three business days prior to the agreed delivery deadline or up to 5% above the agreed delivery quantity also without our prior approval.

§ 4 Prices, payment conditions

(1) The price specified in the order is binding. All prices are understood as inclusive of the legal value added tax, when this is not separately specified.
(2) If nothing else is specified in an individual case, the price includes all the services and supplementary services of the Seller (e.g. assembly, installation) as well as all the additional costs (e.g. proper packaging, transport costs, including eventual transportation and liability insurance). Upon our request, the Seller must take back the packaging material.
(3) The agreed price is due for payment within 30 calendar days from the complete delivery and service (including an eventually agreed acceptance) as well as from the access to an orderly invoice. When we make the payment within 14 calendar days, the Seller gives us a 3% discount on the net amount in the invoice. In the case of bank transfer, the payment is considered received on time when our remittance order is received in our bank prior to the expiration of the payment deadline; we are not responsible for delays due to the payment procedures of the participating banks.
(4) We do not owe any interest on maturity. The default interest rate amounts annually to 5 percentage points above the basic interest rate. In the case of our delay, the legal regulations are applicable, whereby in any deviation from that a written warning from the Seller is eventually necessary.
(5) The offset rights and the rights of retention as well as the plea of not-fulfilled contract are available to us in the legal scope. We have, in particular, the right to retain due payments, insofar as we are entitled to claims against the Seller from incomplete or defective services.
(6) The Seller has offset right and right of retention only for finally established or uncontested counterclaims.

§ 5 Performance, delivery, passing of risk, acceptance delay

(1) The Seller does not have the right to subcontract to a third party (e.g. a subcontractor), without a prior written approval, a service that has to be provided by him. The Seller bears the procurement risk for his services when not in individual case something else has been agreed (e.g. selling a product that is in stock).
(2) The delivery takes place within Germany's "free factory delivery" to the location that is specified in the order. If the place of destination is not specified and nothing else has been agreed upon, then the delivery must take place to our business headquarters in Vellmar. The respective place of destination is also the place of performance (debtor's address). The transportation insurance is performed by the Supplier, unless the contrary has been agreed upon.
(3) The delivery is accompanied by a delivery note containing the date (issuance and shipping), content of the delivery (Article No. and number of articles), as well as our order identifier (date and number). If there is no delivery note or if it is incomplete, we do not bear any responsibility for the resulting delays in the processing and the payment.
(4) Separately from the delivery note, a corresponding shipping notice with the same content must be sent.
(5) The hazard for the accidental loss and the incidental deterioration of the product passes to us with the transfer at the place of performance. Insofar as an acceptance is agreed, it is based on the transfer of the hazard. Apart from that, the legal regulations are also valid, respectively, in the case of an acceptance. The same is true with respect both to the transfer and the acceptance when we are in delay of the acceptance.
(6) The legal regulations are valid in the event of acceptance delay on our part. However, the Seller must explicitly offer us his service also when a predetermined or determinable calendar time has been agreed upon for a handling or collaboration on our part. If we are in a situation of acceptance delay, the Seller can request a compensation for his additional expenses according to the legal regulations (§ 304 BGB). If the Contract concerns non-fungible goods (unique product) that are to be produced by the Supplier, the Supplier shall be entitled to farther-reaching rights only when we are obliged to collaborate and the collaboration has remained undone.

§ 6 Inadequate delivery

(1) For our rights in the case of material defects and deficiencies in title of the commodity (including wrong delivery and underdelivery, as well as unprofessional assembly, defective assembly, operation or service manuals) and for other breaches of duty by the Seller, the legal regulations are valid, if nothing else has been specified.
(2) According to the legal regulations, the Seller is responsible, in particular, that at the risk transfer to us the commodity is of the agreed quality. In any case, as agreement on the quality, those product descriptions are valid, which – in particular through designation or reference in our order – are object to the respective contract or in the same way as these AEB were included in the contract. Thereby it does not make any difference whether the product description originates from us, from the Seller or from the manufacturer.
(3) Differently from § 442 section 1 p. 2 BGB, we are entitled to claims for defects without limitation also when, due to gross negligence, the defect has remained unknown to us.
(4) For the commercial inspection obligation and notification of defects, the legal regulations (§§ 377, 381 HGB - Code of Commercial Law) are valid, with the following proviso: Our inspection obligation is limited to defects, which often come to light during our goods delivery control under external examination, including the delivery documents, as well as during our quality control by using the random sampling approach (e.g. damages caused during transportation, wrong delivery and underdelivery). If an acceptance is agreed upon, there is no examination duty. In addition, it depends on whether and to what extent an examination by taking into consideration the circumstances at the individual case is doable according the orderly business operation. Our notification of defects duty for later discovered defects remains unaffected. In all the cases, our complaint (notice of defect) is valid as immediate and on time, when it arrives to the Seller within 5 working days.
(5) The testing and subsequent improvement costs of the Seller (including the eventual disassembly and assembly costs) are borne by the Seller also when it is established that actually there is no defect. Our liability for compensation as a result of an unjustified request to remedy a defect remains unaffected; however, we are liable only when we knowingly or by gross negligence have not recognized that there was no defect.
(6) If the Seller does not fulfill his obligation for supplementary performance – according to our choice by correcting the defect (subsequent improvement) or by delivery of a product free of defects (replacement delivery) – within a reasonable period of time set by us, we can correct the defect by ourselves and request from the Seller a compensation of the expenditures that have been necessary for that and a corresponding advance payment. If the supplementary performance by the Seller has failed or is unacceptable for us (e.g. due to particular urgency, threat to the operational safety or hazard for suffering disproportioned damages), this does not require any setting of a deadline; we will inform the Seller about this type of circumstances immediately, if possible, even in advance.
(7) In addition, according to the legal regulations, in the case of material defects and deficiencies in title, we have the right to request a reduction of the purchase price or to withdraw from the contract. In addition, according to the legal regulations, we have claim for compensation for damages and reimbursement of expenses.

§ 7Supplier regress

(1) Along with the claims for defects, we are entitled entirely to our legally determined regress claims within a delivery chain (supplier regress according to §§ 478, 479 BGB). In particular, we have the right to request from the Seller exactly the type of the supplementary performance (subsequent improvement or replacement delivery), which we are due to provide to our customer in individual case. Our legal right to choice (§ 439 section 1 BGB) is not restricted by that.
(2) Before we recognize or fulfill a claim for defects by one of our customers (including reimbursement of expenses according to §§ 478 section 3, 439 section 2 BGB), we will notify the Seller and request a written statement in this respect after providing him with a brief description of the facts. If we do not receive such a statement within a reasonable period of time and also if no amicable solution has been found, then we are actually liable to our customer for the claim for defects; in such a case, the Seller is obliged to provide evidence to the contrary.
(3) Our claims from the Supplier regress are valid also then, when the commodity has been further processed prior to its selling to a consumer by us or by one of our customers, e.g. by its incorporation in another product.

§ 8 Manufacturer liability

(1) If the Seller is responsible for a defect in a product, he must release us from claims by third parties in this respect because the cause for that lies in the area of his management and organizational domain and he is himself liable in an external relationship.
(2) Within the framework of his indemnification obligation, the Seller must reimburse to us the expenses according to §§ 683, 670 BGB, which result from or in relation to a claim by a third party, including recall actions performed by us. We shall inform the Seller - as far as this is possible and acceptable - about the content and scope of the recall measures and give him an opportunity to express his opinion in this respect. The further legal claims remain unaffected.
(3) Correspondingly, the Supplier maintains the level of his guarantee value in accordance with his responsibility as well as his risk-based operational and productliability compulsory insurances or any other comparable risk-covering insurances. The insurance documents and polices must be submitted upon our request.

§ 9 Protection rights

(1) The Supplier bears the responsibility that no rights of third parties are infringed in connection with his delivery, insofar as he does not prove that he is not responsible for the breach of duty.
(2) If we receive claims in this respect by a third party, the Supplier is obliged to release us from these claims at our first request about that in writing; we do not have the right to conclude any agreements with the third party, in particular to reach a settlement, without an approval by the Supplier.
(3) The indemnification obligation of the Supplier is related to all the expenditures we incur in connection with a claim by a third party.

§ 10 Secrecy and retention of title

(1) We reserve our property rights and the copyright to all the drawings, schemes, sketches, calculations, implementation instructions, product descriptions and other documents. This kind of documents should be used exclusively for performing the contractual services and shall be returned to us after the execution of the contract. These documents must be kept in secrecy also after the end of the contract. The obligation to secrecy expires only when and insofar when the knowledge contained in the provided documents has become generally known.
(2) The above regulation is valid, respectively, for substances and materials (e.g. software, finished and semi-finished products) as well as for tools, templates, samples and other objects which we make available to the Seller for manufacturing purposes. This kind of objects – insofar as they are not processed – must be properly stored at the costs of the Seller and have to be insured at an appropriate level against loss and destruction.
(3) Any processing, mixing or combining (further processing) of the provided objects by the Seller is done for us. The same is valid for the further processing of the delivered goods by us, so that we are considered as the manufacturer and obtain ownership of the product at the latest with the further processing in accordance with the legal regulations.
(4) The transfer of the goods to us must take place unconditionally and regardless of the payment of the price. However, when in an individual case we receive an offer from the Seller for a transfer with a special condition for paying the purchase price, the retention of the property rights of the Seller expires at the latest with the payment of the purchase price for the delivered commodity. We remain authorized in the orderly course of the business also prior to the payment of the purchase price for performing further selling of the commodity under the condition of the requirement originating from here (alternatively applying the validity of the simple reservation of the proprietary rights that are extended up to the further selling). In any case, however, all other forms of retention of property are excluded, in particular the expanded, forwarded and extended reservation of the proprietary rights for the further processing.

§ 11 Statute of limitation

(1) The reciprocal claims of the contracting parties come under the statute of limitation according to the legal regulations, if nothing else has been subsequently determined.
(2) In a deviation from § 438 section 1 No. 3 BGB, the general period of limitation for claims for defects is 3 years from the transfer of the risk. Insofar as an acceptance is agreed upon, the status of limitation begins with the acceptance. The 3 years period of limitation is valid, correspondingly, also for claims resulting from defective titles, whereby the legal period of limitation for urgent surrender claims of third parties (§ 438 section 1 No. 1 BGB) remains unaffected; in addition, the claims resulting from defective titles do not come under the statute of limitation, as long as the third party can still use the right against us – in particular in the case of absence of period of limitation.
(3) The periods of limitation of the purchase right, including their expected extension are valid – within the legal scope – for all contractual claims for defects. If due to a defect there are also non-contractual claims for compensation for damages, the regular legal statute of limitation is valid for them (§§ 195, 199 BGB) when in an individual case the application of periods of limitation according to the purchase law does not lead to a longer period of limitation.

§ 12 Transfer of rights and obligations

Aufträge an den Lieferanten und sonstige Rechte und Pflichten dürfen nur mit unserer vorherigen schriftlichen Zustimmung auf Dritte übertragen werden. Eine Abtretung von Geldforderungen ist jedoch auch ohne Zustimmung möglich, soweit das Rechtsgeschäft, das die Forderung begründet hat, für beide Teile ein Handelsgeschäft ist.

§ 13 Integrity clause

Seebach GmbH and the Supplier are obliged to take all the necessary measures for prevention of corruption and other criminal actions. In particular, they are obliged to take in their companies all precautionary measures, in order to prevent any serious violations, namely against the criminal laws, against regulations, which are significant from a competition point of view, environment protection regulations, occupational safety conditions and the recognized rules of technology. Furthermore, they are obliged to commit in an adequate way to these principles also the associated companies, the employees, the subcontractors and their suppliers as well as to ensure their adherence to them. A comprehensive code of conduct is available for downloading under www.smiths-nroun.com. Complaints against Seebach GmbH can also be made there.

§ 14 Choice of law and place of jurisdiction

(1) For these Purchasing Conditions and all legal relationships between us and the Seller, the laws of Federal Republic of Germany are valid, under exclusion of the international uniform law, in particular the UN Sales Convention. The prerequisites and effects of the retention of title are subject to the laws at the respective storage location of the product, insofar as the made choice of law in favor of the German law is inadmissible or ineffective.
(2) If the Seller is a merchant in the meaning in the code of commercial law, legal entity under public law, or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes resulting from the contractual relationship is our registered office in Vellmar. However, we have also the right to legal action at the place of execution of the delivery obligation.