



**General Terms and Conditions of Purchase of ELG Utica Alloys GmbH, Kremerskamp 16, 47138 Duisburg, Germany**

**1. General**

1.1 These General Terms and Conditions of Purchase ("Terms and Conditions of Purchase") of ELG Utica Alloys GmbH, Kremerskamp 16, 47138 Duisburg, Germany ("ELG") apply exclusively to companies within the meaning of Section 14 BGB [German Civil Code] i.e. natural persons or legal entities which, in respect of the delivery of the goods, are acting in the performance of their commercial or independent professional activities ("Suppliers").

1.2 Our Terms and Conditions of Purchase shall apply exclusively. We do not acknowledge any general terms and conditions of the Supplier which are contrary to or differ from our Terms and Conditions of Purchase unless we have expressly approved their validity in writing. Our Terms and Conditions of Purchase shall also apply if we accept or pay for deliveries of goods by the Supplier in the knowledge of terms and conditions of the Supplier which are contrary to or differ from our Terms and Conditions of Purchase. Terms and conditions of the Supplier shall not apply even if we do not specifically object separately to their validity.

1.3 Our Terms and Conditions of Purchase shall also apply to all deliveries and services by the Supplier to us in the future until our new Terms and Conditions of Purchase apply.

**2. Conclusion of contracts and amendments of contracts, prices**

2.1 Our quotations, in whatever form they are communicated, are without engagement and not binding. A contract shall only be concluded when the order is confirmed by us in writing.

2.2 The contract shall be binding unless the Supplier objects to it within five calendar days of receipt of the order confirmation. The Supplier shall not be required to countersign the order confirmation.

2.3 Verbal agreements prior to or upon conclusion of the contract shall only be valid when confirmed in text form by our Purchasing Department.

2.4 The agreed prices are fixed prices and include additional charges of any kind. Unless a specific agreement is concluded, prices are ex works, duty and tax paid (DDP pursuant to Incoterms 2010) including packaging. They do not include turnover tax.

2.5 Our purchase orders are based on the Supplier's warranty that the delivery item and delivery items in preparation supplied by the Supplier are pre-registered resp. registered under REACH. We shall have the right to request the Supplier to submit certificates of origin and inspection with respect to the delivery items, especially with respect to the REACH Regulation, free of charge.

**3. Delivery, passing of risk**

3.1 Deviations from our contracts concluded and purchase orders shall only be admissible with our prior written consent.

3.2 The order date, contact partner and purchase order reference number (purchase order number) must be indicated on all shipping documents (delivery note, consignment notes etc.), all invoices and all correspondence with ourselves.

3.3 Agreed dates and periods are binding. Compliance with a delivery date or delivery period shall be determined by receipt of the goods at our company. If delivery "free works" is not agreed (but e.g. CIP, CPT or DDP pursuant to Incoterms 2010), the Supplier shall make the goods available in due time, taking account of the time for loading and dispatch to be agreed with the freight forwarder. Where a calendar week is agreed as delivery date, the last date shall be Friday of that week. In the absence of an express agreement, the goods shall be delivered to our place of business.

3.4 If agreed delivery dates are not complied with, statutory provisions shall apply in addition to the penalties in para. 16 below. If the Supplier anticipates difficulties regarding compliance with the delivery date or similar circumstances which could prevent the Supplier from supplying on schedule or supplying in the agreed quality, the Supplier shall notify our Purchasing Department immediately in writing.

3.5 Unconditional acceptance of a late delivery or service shall not constitute a waiver of claims for compensation, to which we are entitled due

to the late delivery or service. This shall also apply after payment of the remuneration due from us for the delivery or service in question has been made in full.

3.6 We shall only take delivery of the quantities or numbers of items we have ordered. Excess deliveries or short deliveries shall only be admissible if previously agreed with us or if they are reasonable for us.

3.7 Values determined by us during the incoming goods inspection shall be decisive for numbers of items, weights and dimensions unless otherwise proved.

3.8 Goods shall be packed to ensure that transport damages or transport losses are prevented. The use of packaging materials shall be limited to the extent required for that purpose. Only environment-friendly, non-toxic, easily recyclable packaging materials may be used. Reuse systems are to be preferred. The Supplier's obligation to take back packaging is governed by statutory provisions.

3.9 The Supplier shall provide any freight forwarders engaged with shipping documents to be handed over at the place of destination which indicate the quality of the goods supplied, the quantity and number on the order confirmation. Where different types are supplied, a loading list must be enclosed. If one or several of these details are omitted, we shall not assume any liability for any reduction in valuation and billing arising therefrom, save for a case in para.12.2 below.

3.10 The combination of different types of goods shall only be permitted on the basis of a specific written agreement. Sorting costs incurred shall be borne by the Supplier.

3.11 The Supplier shall bear the risk of accidental loss (passing of risk), unless otherwise agreed, until acceptance of the goods by ourselves or our representative at the place where the goods are to be delivered according to the order.

**4. Force majeure**

4.1 Force majeure and industrial disputes shall release us from the obligations to perform for the duration of the disruption and to the extent of its effect. We shall, however, be obliged to the extent reasonable to give the required information immediately and to adapt our obligations to the changed circumstances in good faith.

4.2 We shall be released from the obligation to take delivery of the ordered delivery/service in whole or in part and shall have the right to rescind the contract in this respect if the delivery/service can no longer be used, taking into account economic considerations and the justified interests of the Supplier (Section 315 BGB [German Civil Code], due to the delay at our company caused by force majeure resp. an industrial dispute.

**5. Notice of dispatch and invoice**

The information in our purchase orders and call-offs for delivery shall apply. One copy of the complete and valid invoice shall be addressed to the respectively printed address, indicating the invoice numbers and other identifiers. It may not be enclosed with the shipments.

**6. Terms of payment**

6.1 Unless otherwise specifically agreed, we shall pay invoices either within 14 days less a 3 % cash discount, or within 30 days without deduction, as of the due date of the request for payment and receipt of both the invoice and the goods resp. provision of the service at our company. Payment shall be subject to verification of the invoice.

6.2 Invoices that are not correctly submitted (i.e. accurate, complete, correct and auditable) shall be deemed received by us only when correct. The term of payment for invoices shall begin upon receipt of a complete, valid, correct and auditable invoice. Where a delivery/service is defective, we shall have the right to withhold a proportionate amount of the payment until proper performance.

**7. Guarantee, warranty, product liability**

7.1 The Supplier warrants that all deliveries/services comply with the relevant legal provisions and the regulations and guidelines of authorities, employers' liability insurance associations and trade associations. If deviations from these regulations are necessary in individual cases, the Supplier must obtain our written consent for this. This consent shall not limit the Supplier's liability for defects.



7.2 In the event of defects, we shall be entitled to full legal claims. By way of derogation from this, the warranty period is, however, 36 months as of passing of risk, in the case of defects of title, 5 years as of passing of risk. The statutory period of limitation for parts of a delivery overhauled or repaired within the statutory period of limitation for our claims for defects shall start to run again as of the date on which the Supplier has fulfilled our claims for supplementary performance in full.

7.3 In the event of defective partial deliveries, we shall also have the right, after unsuccessful supplementary performance, to rescind the contract as a whole if interest in the delivery as a whole ceases to exist due to the defective partial delivery (e.g. because the delivery cannot be used as a whole or is it more economical for us to order the goods again as whole) and the defect is more than just negligible.

7.4 Before we make a reduction, the Supplier shall have two working days to examine the defect in quality resp. the deviation in quantity. If the parties fail to agree on the defect in quality resp. deviation in quantity, an independent expert shall be engaged, the costs for this to be borne by the unsuccessful party. If the period for the Supplier to examine the goods supplied expires without proof being provided to the contrary for the defects and/or deviations determined by us or a relevant expert opinion exists, we shall have the right to process the goods, provided the defects in quality allow, and to deduct a price discount customary for the market.

7.5 We shall examine the goods within a reasonable period for any defects in quality or deviations in quantity to the extent that is reasonably and technically possible for us. We shall notify the Supplier of obvious defects in the delivery/service immediately in writing as soon as they are determined according to conditions in the normal course of business but at the latest within 14 calendar days of receipt of the delivery at our company. We shall give notice of hidden defects immediately but at the latest within 14 days of their detection.

7.6 The Supplier shall be obliged to indemnify us against damage claims if they should be asserted against us due to defects in delivery to third parties. In the event of defects of title, the Supplier shall furthermore indemnify us against third-party claims in this respect, including the customary costs of legal defence and our administrative costs. If the Supplier has manufactured its delivery or service according to documents provided by us or at our express instruction and could not have known that this would infringe third-party property rights, the foregoing obligation to indemnify shall not apply.

7.7 If a claim is asserted against us for violation of official safety regulations or by reason of domestic or foreign product liability regulations or laws because of the defectiveness of goods which is attributable to the Supplier's goods, we shall then have the right to request compensation for this damage from the Supplier if this was caused by the goods delivered by the Supplier. The Supplier shall carry out quality assurance which is appropriate in nature and scope and corresponds to state-of-the-art technology and shall provide us with proof of this upon request. The Supplier shall conclude a corresponding quality assurance agreement with us if we deem this necessary. The Supplier shall furthermore insure itself for an adequate amount against all risks arising from product liability including the risk of recall and upon request submit the insurance policy to us for inspection.

## **8. Radioactivity, danger of explosion, hollow bodies**

8.1 The Supplier guarantees that all goods, raw materials or commodities supplied by it are free from substances which have been exposed to radiation, parts suspected of containing explosive material and hollow bodies.

8.2 The Supplier furthermore warrants that all material supplied was checked for radioactivity using measuring devices which conform with state-of-the-art technology. The Supplier supplies exclusively material where there were no indications, within the scope of the measuring accuracy of the measuring equipment, of ionising radiation above naturally occurring background radiation. The limits of the strictest legal regulations resp. directives (inter alia Directive 96/29 EURATOM) valid in Germany must be complied with.

8.3 If radioactively contaminated material resp. other defects pursuant to para. 8.1 above occur at our company, the Supplier shall be liable for all consequential damages such as in particular lost profit, contractual penalties and penalties. The Supplier shall also be liable for consequential damages due to production stoppages and/or plant closure, personal injuries and their consequential costs as well as the costs for disposing of the contaminated material.

## **9. Origin of goods**

9.1 The Supplier shall specify the country of origin of the goods pursuant to the provisions of the Zollkodex (ZK) [German Customs Code] in commercial documents and shall at our request provide a certificate of origin concerning the origin of the goods.

9.2 The goods shall fulfil the origin requirements of the bilateral or multilateral preferential agreements or the unilateral origin requirements of the Generalised System of Preferences for beneficiary countries (GSP) if the deliveries are made within the scope of such transactions.

## **10. Property rights**

10.1 The Supplier guarantees and warrants that all deliveries are free of third-party property rights and in particular that the delivery and use of the delivery items does not infringe patents, licences or other third-party property rights.

10.2 The Supplier shall indemnify us and our customers against third-party claims from any infringement of property rights and shall also bear all costs incurred by us in this connection.

10.3 We shall have the right, at the Supplier's expense, to obtain approval from the beneficiary to use the delivery items and services in question.

## **11. Liability of the Supplier**

The Supplier shall be liable in an unlimited amount according to legal provisions, especially for its own negligent breach of duty and negligent breach of duty by its legal representatives or vicarious agents.

## **12. Liability of ELG**

12.1 We shall not be liable for claims, in particular not for claims by the Supplier for damages or reimbursement of expenses, for whatever legal reason, and/or in the case of breach of duty from the obligation and tort.

12.2 The above exclusion of liability shall not apply

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations; material contractual obligations are obligations, the fulfilment of which determines the contract, and on which the Supplier may rely;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents.

12.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in paragraph 12.2 above exist, our liability shall be limited in amount, also in the case of violation of material contractual obligations, to typical and foreseeable damages at the time the contract was concluded.

12.4 Any further liability shall be excluded.

12.5 Exclusion resp. limitation of liability according to paragraph 12.1 to 12.4 above and paragraph 12.6 shall apply to the same extent for the benefit of our executive and non-executive employees and other vicarious agents as well as sub-contractors.

12.6 If the Supplier is entitled to damage claims according to this paragraph 12, these may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period.

12.7 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## **13. Quality and documentation**

13.1 The Supplier shall continuously verify the quality of the delivery item. The Supplier shall notify us of any potential improvements immediately.

13.2 If minimum and/or maximum values of parameters are specified in a purchase order, these values may not be exceeded or fall short of the minimum values in any area of the delivery item or goods. This shall be assured and documented by suitable test and measurement procedures. We shall have the right to request the notification of the results of such verification in writing at any time and without additional costs.

13.3 Product-specific and/or technical documentation, certificates of conformity and other documents, certificates and operating instructions



required for the contractual item or its use, at our option in German or English, and the marking of the parts and goods and/or their packaging required by law shall form part of the scope of delivery without separate charge.

13.4 The Supplier shall ensure that the delivery items can be traced exactly through batches.

#### **14. Rights to retention of title**

We can use and/or resell the delivered goods without any limitation in the ordinary course of business.

#### **15. Execution of work**

Persons who carry out work at the business premises in the performance of the contract shall comply with the respective internal rules. Liability for accidents which befall such persons on the business premises shall be excluded unless they were caused by intentional or grossly negligent breach of duty by our legal representatives or vicarious agents.

#### **16. Penalties**

If the Supplier defaults in remedying a defect or making a delivery, we shall have the right to request lump-sum damages due to default, without further proof of damage, of 0.5 % of the net remuneration agreed for the defective resp. late delivery and/or service for each period of default of 7 calendar days or part thereof but at most 5 % of the agreed net remuneration for the defective resp. late delivery. The Supplier shall, however, have the opportunity to prove to us that we incurred no damage or materially lesser damage. This shall not affect our further legal and contractual claims. The above lump-sum damages shall be set off in full against any further damage claim.

#### **17. Provision**

Substances, parts, containers and special packaging provided by us shall remain our property. They may only be used for their intended purpose. Substances shall be processed and parts assembled for us. It is understood that we co-own the products manufactured using our substances and parts, which are kept for us by the Supplier in this respect, in the ratio of the value of the substances and parts provided to the value of the product as a whole.

#### **18. Documents and confidentiality**

All business, technical or product-related information, especially calculation data, manufacturing specifications, internal production information and data, of whatever kind, made accessible by us to the Supplier, including other development or manufacturing features to be taken from any objects, documents or data provided shall not be disclosed to third parties and may only be made available to those persons at the Supplier's own company who must necessarily be involved in their use for the purpose of the delivery or service to us and who are likewise obliged, in as far as this is permitted with respect to employees under labour law, in writing to treat them as confidential. We shall retain the exclusive title to such items. This shall not apply insofar and as long as such information is proven to be in the public domain or a legal or official obligation of disclosure exists. Such information may not be reproduced or used commercially, other than for deliveries to us, without our prior written consent.

#### **19. Data protection**

We store data arising from the contractual relationship in accordance with the General Data Protection Regulation (GDPR) for the purpose of data processing and solely for the purpose of implementing concluded contracts.

#### **20. Legal minimum wage (MiLoG) [German Minimum Wage Law], Arbeitnehmerentgesetz (AEntG) [Law on the Posting of Workers], prohibition of illegal employment, compliance**

20.1 The Supplier shall ensure that the employees used by it or the sub-contractors it uses or personnel service providers to execute contracts with customers are paid the legal minimum wage according to the *MiLoG* or, if the services to be provided fall within the scope of the *AEntG*, the legal wage respectively prescribed for the industry. The Supplier shall likewise ensure that mandatory obligations to pay contributions to social security institutions, employers' liability insurance associations and other bodies, such as the joint bodies of the parties to the collective agreements specified in Section 8 *AEntG*, are complied with. The Supplier shall verify compliance with the preconditions pursuant to this paragraph 20.1 when selecting sub-contractors or personnel service providers.

20.2 In the event that claims are justifiably asserted against the customer, as if it was a guarantor, by an employee of the Supplier or an employee of a sub-contractor used, at whatever level, or a personnel service provider, for payment of the legal minimum wage or minimum wage for the industry or by one of the bodies of the parties to the collective agreements specified in Section 8 *AEntG* for payment of contributions, the Supplier shall indemnify the customer against such claims.

20.3 The Supplier shall furthermore be liable to the customer for any damage arising for the customer as a result of negligent failure to comply with the obligations pursuant to paragraph 21.1.

20.4 Illegal employment of any nature is prohibited.

20.5 We have declared the notion of compliance to be a key company value. We expect the Supplier, therefore, to comply with respectively applicable national statutory provisions within the scope of its business activities on behalf of and with us. This applies in particular to legal requirements in relation to industrial safety and employee protection, compliance with human rights, prohibition of child labour, criminality of corruption and the granting of advantages of any kind and in relation to environmental protection etc. Furthermore, we expect the Supplier to communicate these principles and requirements to its sub-contractors and suppliers and to encourage them to comply with these laws as well.

#### **21. General provisions**

21.1 Contracts concluded with us may only be transferred to third parties with our written consent. This shall also apply to the claims arising from the contracts concluded with us.

21.2 Place of performance for deliveries and payments is Duisburg.

21.3 Any disputes between ourselves and the Supplier arising from and in connection with these Terms and Conditions of Purchase shall be settled exclusively before a competent Duisburg court of law. We shall also have the right at our option to bring an action against the Supplier at its place of general jurisdiction.

21.4 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Sales Convention (CISG).

21.5 Verbal agreements after conclusion of a contract, especially subsequent amendments and modifications of our Terms and Conditions of Purchase, including this written form clause and collateral agreements of any kind, shall only be valid when confirmed in writing by us. This shall not affect the precedence of an individual agreement pursuant to Section 305b *BGB*.

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