

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

**OF**

**SEISENBACHER GMBH  
SCHWARZENBERG 82  
A – 3341 YBBSITZ**

**FN 85162 P  
LANDESGERICHT ST. PÖLTEN**

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## 1. Area of application

- 1.1 These General Terms and Conditions of Purchase (GT&CP) shall apply to all legal transactions of Seisenbacher GmbH, Schwarzenberg 82, 3341 Ybbsitz covering the purchase of goods and other services with its Suppliers. If reference is subsequently made to "goods", this shall also apply mutatis mutandis to other services.
- 1.2 General Terms and conditions of the Supplier are valid only insofar as they are consistent with these GT&CP. Conditions or other restrictions of the Supplier that are contrary to or deviate from the GT&CP, of whatever kind, shall not be deemed an element of the contract, unless expressly agreed in writing by Seisenbacher GmbH. Deviations from these GT&CP are only effective if they are confirmed in writing by Seisenbacher GmbH.
- 1.3 These GT&CP also apply to future transactions with business associates of Seisenbacher GmbH, without any reference being made to them.
- 1.4 The Supplier Quality Management Guidelines is valid in combination with the general terms and conditions of purchase.

## 2. Contents of Contract

- 2.1 Together with the order of Seisenbacher GmbH, the GT&CP within the meaning of point 1 form an integral part of the legal transactions conducted with Seisenbacher GmbH.
- 2.2 Subsequent changes to the contract must be agreed in writing.

## 3. Offer, order and conclusion of contract - Transfer of rights

- 3.1 Every Supplier has to adhere strictly to the inquiry of Seisenbacher GmbH and in case of deviations, and the Supplier shall explicitly refer to any existing deviations.
- 3.2 The offer of Suppliers must be made free of charge and imposes no obligations on Seisenbacher GmbH.
- 3.3 Seisenbacher GmbH shall place and modify its orders in writing (including by fax and / or e-mail). The content of orders and order changes placed orally or by telephone is binding on the Seisenbacher GmbH only if it is explained by Seisenbacher GmbH to the Supplier in writing.
- 3.4 The contract between the Supplier and the Seisenbacher GmbH takes effect when an offer is made by the Supplier and it is accepted by Seisenbacher GmbH (= order). Acceptance is made by sending

an order to the Supplier in accordance with point 3.3. Discrepancies between the Supplier's offer and the acceptance (order) of Seisenbacher GmbH shall be deemed approved if the Supplier conforms to the acceptance or does not specifically explain his objection in writing within 3 days. Order confirmations of the Supplier are mere declarations of knowledge, that is, they are provided for informational purposes only. Order confirmations at the request of Seisenbacher GmbH shall be issued by the Supplier within 8 days.

- 3.5 The Supplier is not entitled, without prior written consent of Seisenbacher GmbH, to transfer rights or obligations under the contract with the Seisenbacher GmbH to subcontractors or other third parties, neither entirely nor partially. The Supplier is not entitled, without the prior written consent of Seisenbacher GmbH, to use subcontractors to perform the services entirely or partially, which are the subject matter of the contract. Nevertheless, the Supplier shall be liable in any event for the supplies and services of his subcontractors and is responsible for ensuring that the Supplier complies with all the obligations that have been imposed on him.
- 3.6 Seisenbacher GmbH is, however, entitled, without the consent of the Supplier, to transfer all rights and obligations resulting from this contractual relationship with discharging effect to affiliated companies (e.g. sister company). In this case, Seisenbacher GmbH will immediately give the Supplier all relevant information about this company. Delivery conditions and country-specific standards and regulations are to be negotiated separately.

## 4. Product requirements

- 4.1 Deliveries must be comply with the quality conditions specified in the framework agreement or in the order. If and in so far there are no special quality conditions included in the order, the delivery item must have at least the marketable quality and the characteristics normally required and comply with the statutory and administrative regulations, in particular security, labour protection and accident prevention regulations and the applicable standards (such as national and international standards and regulations, works standards), guidelines, which are applicable at the destination, at the registered office of the Supplier and at the headquarters of Seisenbacher GmbH (and in this order) and taking into account the progress and generally approved practices of engineering and all regulations based thereon. The standards and drawings listed in the orders refer to the most recently published issue that is valid at the time of order, unless expressly stated otherwise in the order. All specifications of Seisenbacher GmbH shall be requested by the Supplier, unless they have been already provided.
- 4.2 The Supplier has to be sufficiently informed about the intended use of the delivery item and the resulting demands.

- 4.3 If imports, exports or other regulatory approvals and authorisations or consents of third parties are required for executing the order, the Supplier shall obtain them on time.
- 4.4 All relevant EU directives regarding CE-marking that are applicable to the product must be observed. The declaration of conformity incl. the relevant documentation is part of the delivery.
- 4.5 The Supplier is obligated to submit a proof of preference about the requirements of Seisenbacher GmbH. Deliveries from non-EU countries must be made in accordance with the rules on preferential origin of the corresponding preferential agreement with the EU, unless the contrary is expressly agreed.
- 4.6 Upon request of the manufacturer, the Supplier is also obligated to name the importer or outside Supplier.
- 4.7 The Supplier shall provide all components and services necessary to meet the requirements set by Seisenbacher GmbH, which are already included in the price, even if they are not explicitly stated in the order.
- 4.8 For the material evidence of the input materials, the Supplier bears all the material and personnel costs.

## **5. Provisions, spare parts list**

- 5.1 All documents and equipment provided by Seisenbacher GmbH to the Supplier for the production of the delivery items are the property of Seisenbacher GmbH. They may not be used for other purposes, duplicated or made available to third parties by the Supplier. On request, they must be handed over to Seisenbacher GmbH together with all copies and reproductions.
- 5.2 The Supplier must hand over the spare parts lists in the local language of the place of performance along with the delivery.

## **6. Pricing and terms of delivery**

- 6.1 Unless otherwise stated in the order, prices are understood to incorporate goods that are packaged, delivered to the location specified, duty-free, unloaded (DDP), these include transport insurance and are fixed prices.

- 6.2 In the event that the price of goods is calculated according to weight or size, the weight or size at the time of handover by Seisenbacher GmbH is only relevant.
- 6.3 Place of performance is the destination (place of delivery) according to the order, unless otherwise specified by Seisenbacher GmbH.
- 6.4 If terms of delivery are specified in the order, this must be interpreted in accordance with INCOTERMS 2010. The Supplier must send a shipping notice (Aviso) to the receiving location at the destination. If the location of delivery is different from the one entered at the headquarters of Seisenbacher GmbH, the Supplier shall send a copy of the dispatch note to Seisenbacher GmbH.
- 6.5 The goods are taken over in Ybbsitz, Schwarzenberg 82 on working days from Monday to Friday. Unless otherwise agreed, the delivery times specified in the orders apply.
- 6.6 The Supplier must pack, label and dispatch dangerous products at his own expense, in accordance with the applicable national and international provisions.
- 6.7 Commercial reusable packaging must be taken back by the Supplier at his own expense.
- 6.8 The Supplier is responsible for ensuring that the subcontractors including contracted transport companies comply with the terms of delivery. All shipments that cannot be taken over due to non-observance of these regulations shall be stored at the expense and risk of the Supplier. Seisenbacher GmbH is entitled to determine the contents and condition of such shipments.
- 6.9 If the Supplier reduces its prices or improves its terms and conditions in the time period between its offer and the delivery, the prices and terms and conditions valid on the day of the delivery shall apply. Price increases and larger delivery quantities will be accepted with the bill only if Seisenbacher GmbH has given its written consent prior to receipt of the invoice. If this is not taken into account by the Supplier, Seisenbacher GmbH is entitled without further notice to reduce the Supplier's invoice accordingly.

## **7. Delivery notes and invoices, certificate of origin**

- 7.1 Each delivery is accompanied by a delivery note, on which the order number and the Seisenbacher item number shall be listed.
- 7.2 Invoices may not be enclosed with the delivery. Invoices without specification of the order may be rejected.
- 7.3 Invoices must be issued in accordance with the statutory provisions (e.g. § 11 Value Added Tax Act)

and wording, order of the text, items and prices of invoices have to correspond to the respective order. Additional or reduced services and transportation costs are listed separately in the invoice, if necessary.

- 7.4 In the event that invoices do not comply with points 7.2 and / or 7.3, the Purchaser may ask for another proper invoice to be sent. Until the arrival of the proper invoice, no due date of the invoice is specified.
- 7.5 For deliveries within the EU, every invoice must contain information necessary to fulfil the statistical requirements of Seisenbacher GmbH (e.g. statistical commodity code, net weight of goods, etc.) and the UID numbers of the Parties.
- 7.6 For initial articles, separate bills shall be issued only after a positive review is received regarding the article.
- 7.7 Export labels must be cited on all offers, order confirmations, delivery notes and invoices. This includes in particular the labelling according to European / German and American export law (Yes / No), specification of the European / German export list number (AL), Specification - if the goods are subject to US export law - the US Export Control Classification Number (ECCN), statistical commodity code, country of manufacture and preferential origin. Moreover, a certificate of origin must be created free of cost, upon request.

## **8. Date of delivery and delays in delivery**

- 8.1 If a delivery period has been agreed, the period starts from the date of receipt of the order by the Supplier. Delivery or completion dates specified and / or agreed by Seisenbacher GmbH are fixed dates and mean that the delivery item must be available to Seisenbacher GmbH at the place of delivery and on the delivery date specified and within the local business hours.
- 8.2 Once the Supplier believes that he cannot deliver on time, he shall notify Seisenbacher GmbH immediately, stating the reasons and the expected duration of the delay.
- 8.3 If the agreed delivery time is not complied with, regardless of whether the Supplier is at fault or not, the Supplier is obliged pay 1% penalty of the net value of goods not delivered, to the maximum extent 10%, of the total amount to be paid to the Seisenbacher GmbH for each working day by which delivery is delayed. In case of a delay in delivery, Seisenbacher GmbH, without prejudice to other legal or contractual claims, has the right to withdraw from the contract under a reasonable extension of period. Any assertion of further claims for damages remains unaffected.
- 8.4 In case of early delivery, the Seisenbacher GmbH reserves the right to charge the Supplier for any resulting additional costs, such as storage costs, etc.

## 9. Payment

- 9.1 Periods for payment shall begin on the specified dates, but not before the dates on which the goods and invoices are received and the conditions for the CE marking and declaration of conformity are met in accordance with point 4.4. If goods and invoice are not received on the same date, the payment period shall begin on a later date. If complaints are received, the period for that invoice begins only after complete and flawless processing of the complaint. In the case of initial articles, the period for that invoice begins when a positive approval notice is received.
- 9.2 Payment shall not be considered as an acceptance that the goods were delivered, nor as a waiver of any vested claims against defects of Seisenbacher GmbH.
- 9.3 Payment shall not be considered as an acceptance of conditions and prices and has no influence on the warranty rights or other rights of Seisenbacher GmbH resulting from the defectiveness of the service.

## 10. Acquisition and warranty

- 10.1 The confirmation on the delivery note and / or the receipt of delivery of the acceptance of goods by Seisenbacher GmbH are only ever valid with reservations, that is goods are only considered to be accepted if there are no discrepancies in amounts and/or faults arising upon later assessment.
- 10.2 The warranty period for movables is 2 years and begins on the day, on which the delivery item was accepted by Seisenbacher GmbH. A final take-over takes place only if the conditions for CE marking and declaration of conformity are met in accordance with section 4.4. If Seisenbacher GmbH has to give their customers a warranty, Seisenbacher GmbH may also ask the Supplier for a warranty after the end of this 2-year period within 6 months of fulfilment of any warranty claims.
- 10.3 The Supplier shall assume warranty for the fact that the delivered goods are delivered according to the order and comply with the quality requirements stated under point 4.1 of these GT&CP. The delivery item must correspond to a given sample and any description in all respects and shall be free of third party rights. The delivery item and its raw materials must also correspond to the public statements made by the Supplier and any subcontractors, in particular in brochures and product descriptions (see point 2.2). Likewise, statements of all intermediaries in the production or distribution chain as well as public information of a person who refers to himself as the manufacturer by affixing his name, trademark or other reference mark. The warranty of the Supplier also covers the parts manufactured by the sub-contractors.

10.4 If the delivered item has one or more defects, Seisenbacher GmbH can - at its free discretion- either

- a) demand the elimination of the defect or the delivery of an item free from defects (repair / replacement)
- b) reduce the remuneration on a reasonable amount (price reduction) or
- c) terminate the contract (conversion).

In all cases, an extrajudicial written declaration of Seisenbacher GmbH is sufficient. The right to a reduction of price or conversion exists even if the Seisenbacher GmbH has requested for a repair, and the Supplier, however, refuses to do so, the service is not provided within a reasonable time (maximum 14 days), an attempt at repair fails or further measures to remedy Seisenbacher GmbH are unreasonable. A right to conversion does not apply if the cancellation of the contract would be economically inefficient in view of the particularly low significance of the defect.

10.5 All costs and risks of repair are borne by the Supplier.

10.6 Seisenbacher GmbH shows the defects of the delivery item to the Supplier without unnecessary delay (defect complaint), but the warranty rights and all other rights of Seisenbacher GmbH arising from the defectiveness of the delivered goods will remain unaffected by both the acceptance of the delivery item by Seisenbacher GmbH as well as non-notification of defects.

10.7 For defects which cannot be detected within the warranty period with an economically reasonable and usual amount of effort, Seisenbacher GmbH is entitled to submit a defect complaint even after the expiry of the warranty period, within 3 months from discovery of the defect and the Supplier undertakes to assume liability for this defect as well.

10.8 If the Supplier is given a notice of defect within the warranty period, the expiry of the warranty period is suspended as long as the rights arising from the defectiveness are invoked. If a completely new delivery item is provided, the warranty period starts anew. In case of a partial renewal, this applies to the renewed parts.

10.9 After the expiry of a reasonable period of time (maximum 14 days) to repair the defect, Seisenbacher GmbH can repair the defect itself or have it repaired by third parties and demand compensation for the necessary expenses. Seisenbacher GmbH shall have the same right if the subsequent performance fails or is not accepted by Seisenbacher GmbH for reasons associated with the Supplier, if the Supplier refuses to remedy the defect seriously, if the item is not repaired till the date or within the period specified in the contract, or if special circumstances exist which justify self-remedy of defects taking into account the interests of both parties Seisenbacher GmbH may require the Supplier to pay an advance for the expenses required to remedy the defect. The warranty provided by the Supplier for deliveries, in which the defects are remedied by Seisenbacher GmbH or third parties within the meaning of the above paragraph, shall remain in force.

10.10 If, during the course of processing of the delivered goods, a defect is caused by Seisenbacher GmbH, it shall be entitled to ask for compensation of the expenses resulted in connection with

the use of defective material. The Supplier shall indemnify Seisenbacher GmbH against all warranty claims and / or claims for damages caused by the goods delivered by the Supplier.

- 10.11 For the duration of the warranty period, Seisenbacher GmbH may withhold up to 10% of the contract value as an interest-free guarantee deposit.
- 10.12 No third-party rights are attached to the delivery item at the time of acquisition by Seisenbacher GmbH.
- 10.13 If no agreement can be reached between the Purchaser and the Supplier within 14 days after the final acceptance (see point 10.2) on whether the delivery item meets the requirements in accordance with point 10.3, then an expert opinion shall be obtained from the competent company of TÜV Austria group at the request of a Party. The opinion of the company of the TÜV Austria Group is binding on both parties. The parties shall bear the costs of such report equally.

## 11. Claims for defects

- 11.1 The Supplier has to reimburse all costs, expenses and damages incurred due to the defect (in particular transport, packaging, road, labour costs and cost of materials as well as assembly, disassembly and processing costs), irrespective of whether they are caused by Seisenbacher, the customer or a third party.
- 11.2 If defects are detected in the items / services delivered to Seisenbacher before acceptance, Seisenbacher reserves the right to a) return them back to the Supplier for repair, modification or replacement, b) to remedy these defects by itself under separate documentation and to invoice the Supplier for the additional expenditure incurred as a result. This applies in particular when the Supplier declares itself unable to repair the defects.
- 11.3 All costs arising in conjunction with the repair, especially transport costs, shall be borne by the Supplier.
- 11.4 Seisenbacher has to verify the terms of the contract upon receipt only with regard to the type of product, quantity, visible transport damages and defects. If Seisenbacher detects a defect in the course of the aforementioned inspection, Seisenbacher shall notify the Supplier of any such defects. If Seisenbacher detects a defect in the course of processing of the terms of contract, Seisenbacher shall also notify these. Complaints can be filed within 21 days from the date of the receipt of goods by Seisenbacher or, provided that the defects were first noticed upon handling or processing, at the time when such defects were determined. Except for the aforementioned inspection and notification duties, Seisenbacher shall owe no additional duties of inspection and notification to the Supplier.

11.5 Seisenbacher has the right to charge a lump sum in the amount of EUR 120 per defect for processing of the complaint.

## **12. Liability for consequential damage caused by a defect, product liability and insurance**

12.1 For damages caused by the defect of the delivered goods to other legal goods (consequential damages), the Supplier shall be fully liable towards Seisenbacher GmbH.

12.2 With regard to the products delivered by him, which also includes parts of products, the Supplier undertakes to reimburse Seisenbacher GmbH all expenses in connection with the fulfilment or elimination and / or defence of claims made under product liability. The Supplier shall indemnify and hold Seisenbacher GmbH completely harmless with respect to all product liability claims made by third parties, both personal injuries and property damages. The Supplier undertakes to support Seisenbacher GmbH in the (both extrajudicial and judicial) defence of such claims, in the best possible way

12.3 Should the Supplier later become aware of circumstances which may lead to product liability claims arising, he is therefore obliged to report these to Seisenbacher GmbH immediately and to reimburse Seisenbacher GmbH with any expense and damages which Seisenbacher GmbH has incurred for any activities with regard to the faulty products (e.g. recall, exchange etc.) or third parties.

12.4 The Supplier has to maintain a liability insurance at his own expenses with a leading European insurance company, in order to cover damages caused by the delivery item or by him, his employees or agents in connection with the delivery of the delivery item. The insurance coverage must also cover claims arising from the statutory product liability. Evidence of the amount of coverage per claim shall be provided to Seisenbacher GmbH upon request. Furthermore, the Supplier has to provide evidence of the insurance at a leading European insurance company to Seisenbacher GmbH, which covers possible damages caused to Seisenbacher GmbH in the event of failure to deliver or delayed delivery.

12.5 In all other respects, the statutory liability provisions shall apply.

## **13. Confidentiality**

13.1 The Supplier undertakes to keep confidential the information which he has rightfully obtained in connection with the Purchase Order, unless this information has become generally known or known to the Supplier in another lawful manner. He shall use all the data disclosed to him solely for

the purpose of processing the order. Even the drawings, samples, patterns, models and other production documents and tools delivered to the Suppliers, which are and will remain to be the physical and intellectual property of Seisenbacher GmbH, must be kept confidential. The Supplier shall protect such information and documents from unauthorised access of third parties and must extend this confidentiality obligation to his employees, subcontractors and other third parties concerned. The provisions concerning confidentiality and data protection exist even after the fulfilment of the order and termination of all further contractual relationships with the Supplier.

- 13.2 The data of the Supplier obtained from each business transaction will be processed automatically for purposes of completion of the contract, in particular for administrative and accounting purposes.
- 13.3 The Supplier agrees, however, that the data of Seisenbacher GmbH in relation to the orders may be processed and transmitted within Seisenbacher GmbH.
- 13.4 The Supplier must treat the inquiry and order as confidential. He is liable for all damages incurred by Seisenbacher GmbH due to the breach of this obligation.

#### **14. Promotional material / reference mention**

- 14.1 The Supplier may only refer to the business relationship with Seisenbacher GmbH and its affiliated companies or customers of Seisenbacher GmbH which he is familiar with, in information and promotional material with the express written consent of Seisenbacher GmbH.

#### **15. Industrial property rights**

- 15.1 The Supplier guarantees that Seisenbacher GmbH shall obtain ownership of the delivery item, free of industrial property rights of third parties. The Supplier is obliged to support Seisenbacher GmbH in defending any claims in the best possible way and compensate Seisenbacher GmbH for all the expenses resulting therefrom. The Supplier shall indemnify and hold Seisenbacher GmbH totally harmless from and against any violations of intellectual property rights of third parties.

#### **16. TERMINATION OF CONTRACT**

- 16.1 Seisenbacher GmbH, notwithstanding its other rights, is entitled to terminate the contract with immediate effect if an important reason is present. An important reason exists in particular if - insolvency proceedings have commenced in respect of the assets of the shareholder, or the opening

of such proceedings has been rejected for lack of assets or the conditions are in accordance with §§ 66 ff of the Bankruptcy Act (KO);

- circumstances exist which render the proper fulfilment of the order by the Supplier obviously impossible.

16.2 In case of a justified withdrawal, Seisenbacher GmbH - irrespective of any other claims - can keep the delivered goods at its own discretion against payment of the prorata consideration or return the supplied products at the Supplier's expense. If the Supplier has caused the cancellation of the contract, he shall compensate the Purchaser for all additional costs arising from and in connection with any replacement delivery by a third party (covering purchase).

## **17. Change of contact details**

17.1 The contracting parties undertake mutually to notify a change of address, fax number or e-mail in writing. Until this declaration is received by another contracting party, declarations shall then also count as delivered if they are sent to the last notified address / fax number / email. Changes in the power of attorney will not take effect for this contractual relationship if they have been communicated to the other party in writing. This also applies to the powers of attorney listed in the Commercial Register.

## **18. Severability clause**

18.1 If a provision of this agreement is or becomes invalid or null and void, the validity of the remaining provisions will not be affected by this. The parties undertake to replace the ineffective provision with a regulation that comes as close as possible to the original economic purpose of said provision.

## **19. Applicable Law**

19.1 These GT&CP and the entire legal relationship between Seisenbacher GmbH and the Supplier is governed by Austrian law, excluding the UN Sales Convention and the reference norms of private international law and the non-mandatory provisions of the European Agreement (the Rome Convention).

## **20. Place of Jurisdiction**

20.1 All disputes arising in connection with the contractual relationship and the legal relationship between Seisenbacher GmbH and the Supplier are exclusively decided by the competent court in St. Pölten / Austria or, at discretion of Seisenbacher GmbH, by the competent court in whose jurisdiction the registered office, business, or property of Supplier is situated.