

## **General Terms and Conditions of Tools of SD GmbH (Effective July 2012)**

For use only in business relations with SD and companies connected with it in terms of §15 AktG ("SD") with companies, corporate bodies under public law and special fund under public law ("suppliers") about the production and usage of tools and/or devices (hereinafter "tools") for the supply of SD with parts and production material ("products"). SD and supplier will be henceforth referred to as "affiliates".

### **I. Validity of the General Terms and Conditions of Tools**

- 1) All orders for the construction and the purchase of tools as well as the usage of tools, maintenance and reinstatement work for SD take place solely on the basis of these "General Terms and Conditions of Tools", that also applies for all future business relations, even when the validity of these conditions is not expressly agreed upon again. The purchaser agrees to the validity of these "General Terms and Conditions of Tools" with the performance of the delivery, at the latest. General Terms and Conditions of Trade apply only if and when they are in agreement with the "General Terms and Conditions of Tools"; however, with this SD already expressly disagrees with a further involvement of such conditions.
- 2) Subsidiary agreements, changes and additions to these General Terms and Conditions of tools are only valid when confirmed by SD in writing. This also applies for changes of the requirement of written form.

### **II. Tool Orders, Tool Construction**

- 1) If SD instructs the production of a tool at the supplier's, the purchaser must present a schedule for the production of tools to SD with the acceptance of the order. If the schedule doesn't satisfy with the demands about scheduling stipulated with the supplier, SD can demand an insight in the supplier's documents underlying the scheduling to a necessary extend. The supplier designs and constructs the tools in accordance with the specifications (especially technical information, design drawings or CAD models of the tool or its parts). The supplier will immediately inform SD in writing, if the specifications are false, incomplete or defective in other ways, in his opinion. Changes of the specification by the supplier require a prior written approval by SD. At the beginning of the mechanical production the design papers must be presented to SD for information. An obligation for SD to examine the design papers for errors or practicability doesn't exist. Furthermore, if not otherwise agreed, the supplier will present a control that shows the tool's progress for a variance analysis at fortnightly intervals as well as a tool drawing on demand and at the appointed time. SD reserves the right to check the production status at normal business hours and without preliminary announcement or the tool's condition during transfer in accordance with paragraph IV. of these conditions, at the supplier's company.

- 2) After the completion of the tools the supplier must present a first sample as well as a fully filled in tool data sheet (including a photo in their open state) to SD.
- 3) Construction, quality and completion of tools are to be adjusted to the technical specifications, functions, performance indexes and drawing requirements. The supplier must ensure that the production of the tools take place in accord with the state of art and in accord with the observation of all relevant regulations expertly, qualitatively flawless and timely. The supplier's obligation about the tool's construction does also contain the corresponding documentation (all drawings, descriptions and other documentations, including CAD models and source code of the tool). If not otherwise agreed the documentation must be available in German language.
- 4) With SD's approval with the drawings, calculations and other technical documents transmitted to SD, the supplier's contractual obligations for the tools remain unaffected.
- 5) The supplier must submit a written offer with the appointment and cost consequences to SD, before the beginning of the modification works, if SD wishes technical changes resp. additions that require price changes or a postponement after the ordering of the tools. Oral agreements after ordering require a written consent. The supplier shall be liable for additional charges or postponements that aren't acknowledged by SD in writing.
- 6) If SD decides that further work on the tools must be shelved before the tools are finished, SD will absorb the costs which provably developed until then. §649 p.2 German Civil Code shall apply correspondingly. SD expressly reserves itself to check the evidence of the costs on location.
- 7) The supplier isn't qualified for serial production of parts until SD's acceptance process passed through successfully and the release of the presented first samples for serial production by SD took place. The supplier shall produce the necessary number of parts under the terms of serial production and present them to SD, according to the tool order or a separate first sample order with the respective initial sample inspection report. The release of the tools doesn't portray an acceptance of the parts flawlessness that are manufactured with the tool. The release of the parts first samples only portrays a release of the tools if they were produced under the terms of serial production and other release requirements have been fulfilled. If the tools or the presented first samples and initial sample inspection report by SD aren't released for series production, the supplier will bear any additional costs that arise out of this, unless SD is responsible for the non-acceptance of the release.

### **III. Subsuppliers**

The supplier is not entitled to assign a subsupplier with the tool production or the production of their parts without a prior written approval by SD. Before an approval, the supplier must provide SD with all desired information about the subsupplier. Furthermore, the supplier commits itself to provide SD with the right to check the subsupplier's company. If a written approval is given, the supplier shall compel the subsupplier, analogous to the regulations of these General Terms and Conditions of Tools. The commission of third parties leaves the supplier's immediate legal accountability towards SD untouched, in any case.

#### **IV. Property, Identification, Passage of Risk and Trade Mark Rights**

- 1)** The property of the tools or their parts for all incomplete intermediary stages including the corresponding documentation, already passes into the ownership of SD with the beginning of the production resp. the purchase by the supplier. The property passes into SD's ownership no matter how much the payment of the tools amounts, SD's obligation to pay in accordance to the respective production status remains unaffected by this. By no means, does this passing of property portray an acceptance of the respective incomplete intermediary stage or the tools.
- 2)** SD shall dedicate the tools as well as the corresponding documentation for the production of goods to the supplier until he demands the release of the same according to paragraph VI. of this contract (bailment). The supplier must clearly visibly mark the tools by the completion as property to SD, at the latest. The tools provided by SD resp. the tools produced for SD must be marked clearly visible and permanently with the SD tool plates provided for this by the supplier. This also applies for semi-finished goods. The supplier must also notice the tool number predefined by SD in the tool order resp. present photos in proof of the labeling on demand.
- 3)** The supplier is obliged to:
  - a)** Store the surrendered tools properly and at no charge, treat it with the appropriate caution, secure against destruction, damage and environmental influences, and industrially insure it against all insurable risks (All Risk) in favor of the purchaser. This insurance must be proved on demand by SD. The supplier shall surrender his claims of the respective insurance agreement to SD, SD will accept this surrender;
  - b)** Ensure the willingness of the tools and perform all maintenances, repairs of the tools and possibly renewals of the tools at his own charge, if they are necessary to produce parts in the quality and amount predefined by SD. Renewals of tools always require a performance and release of new first samples by SD. In case the supplier, for whatever reason, isn't capable to ensure the willingness of the tools, SD shall be entitled to perform the required maintenances, corrective maintenance works and alternative works on the tools itself or arrange for it to be performed by a third party. In this case, the supplier shall prepare the respective tools for the collection by SD or a third party named by SD. The supplier shall bear the costs which emerge out of the transport and the required works;
  - c)** Keep an entire and gapless tool CV. It especially contains the notes about performed changes, services, repairs and produced number of items,
  - d)** Freely store the tools and documentations for a time period set by SD, but minimally 15 years after series production, if not previously reclaimed by SD. A following scrapping can only be performed with a prior written approval by SD; and
  - e)** Immediately inform SD if planned quantities or quantities specified by SD or an entitled third party in forecast delivery schedules reach over 80% of the capacity of the tools. The supplier shall be absolutely liable for damage, whole or part-way doom as well as all damages on the tool, until the release of the tools.

- 4) The supplier ensures that he's not acquainted with any mental or commercial trade mark rights for the tools as well as the documentation, which could deter SD from the free use of the tools. If such rights of the supplier existed, the supplier would grant the exclusive, global, transmittable, unrestricted right of use for the usage of the tools and the corresponding documentation for the production of parts to SD.
- 5) The supplier doesn't know that rights of the third parties have been violated, because of the use of tools and the documentation, after careful examination. In case of infringement the supplier must recoup SD in the licit frame of any claims by third parties.

**V. Usage of Tools**

- 1) The transfer of the tools to the supplier by SD takes place solely for the purpose of the production of goods for SD or by a third party entitled by him in writing. The tools shall only be used for other purposes with a prior written approval by SD.
- 2) The supplier shall commit himself to not recreate the tools or arrange for them to be recreated or build a similar tool or arrange for it to be built for a time period of 5 years after the completion of a respective tool order, if products that are in a state of competition with the parts are produced by this and are therefore suitable to affect or impair SD in relation to the respective end consumer to whom the parts are delivered.

**VI. Surrender of Tools**

- 1) SD is always entitled to demand the surrender of some or all tools, the corresponding documentation, tools CV and all existing replacement parts for the tools. If SD commands the surrender of the tools or their transfer to a different place or to a third party, the supplier shall be obliged to perform this command immediately and upon the first demand. He has the right to get a refund for all associated necessary costs for transport, carriage and packaging. The supplier will have no right of retention for the respective tools and documentations, unless the counterclaim is established undisputably or through a valid decree.
- 2) In case of a non-accidental violation of the obligation for the surrender (in accordance with paragraph 1) by the supplier, SD is entitled to demand a penalty of 0,5% for every started weekday of delay after the expiration of an appropriate deadline for surrender set by SD, but overall not exceeding 10% of the value of the tools. Further or other legal demand remain unaffected by this, a penalty is to be credited here.

**VII. Tool List**

The supplier must compile a tool list (inventory protocol for tools and equipment – as download at [www.sdhirsch.de](http://www.sdhirsch.de)) from the completion of the tools on and keep it continually. The list contains all tools/ sets (with tool numbers, if agreed) with which parts are produced for SD. The ident number of the part that is being manufactured with the tool/set must always be cited in the particular tool position. This tool list is to be made available to SD on demand.

**VIII. Zahlung**

- 1) If not agreed otherwise, the payment of ordered tools takes place after the arrival of the number of first samples produced with these tools, that was named in the tool order, fully filled tool list and written release of the initial sample inspection report by SD.
- 2) The parties can declare that the costs of a tool that must be produced, can be apportioned to a defined number of items and paid in the amount of the price for the series (so called partial amortization). In this case, the agreed tool costs and the defined number of items of production parts will be separately revealed in the order. The parties will still declare particular fabrication steps and dates (milestones in that which follows) for the production of partially amortised tools in the contract and collate every milestone with the respective partial tool costs. SD obtains the right to make payments for the finished tools before the end of the amortization period.
- 3) Furthermore, SD obtains the right to pay a partially completed tool during the tool production. In this case the tool costs decrease to the value content of the milestones that haven't been reached.

#### **IX. Disclosure of Tool Costs**

The supplier must produce an accurate itemization of the tool costs which form the foundation for the settled tool costs according to the respective tool order with the relevant notes and documents to SD for examination. If SD notices that the actual costs were lower than the costs underlying in the tool agreement, the difference must be credited to SD.

#### **X. Time Limits**

- 1) The time limits and dates named in the tool order are binding. In the event of default the supplier must indemnify SD for all costs arising out of this.
- 2) SD is entitled to demand a penalty of 0,5% of the tool value for every started workday of delay but overall not more than 10% of the tool value in case of a delay of a delivery or master sample inspection date by the supplier. Further or other legal demands remain unaffected by this, a penalty is to be credited here. The right to argue a penalty will not be forfeited by the fact that the enforcement of the penalty wasn't expressly reserved with the delayed delivery.
- 3) If the delivery date is delayed because of reasons that SD is responsible for, the supplier shall be entitled to add the respective number of days to the delivery date. The penalty doesn't start until the passing of the newly computed calendar day. This extension is only allowed if the affiliate confides the claim of the renewal right immediately after the delay caused by SD becomes known to SD in writing.

#### **XI. Liability for Defects**

- 1) The supplier ensures that the tools and the documentation
  - a) Were produced according to the specification,
  - b) are in state-of-the-art,
  - c) correspond to all relevant legal regulations, guidelines and other terms
  - d) are free from defects and of sufficient quality as well as qualify for the usage agreed between the affiliates and
  - e) are suitable for production of flawless parts according to the specification and technical documentation

- 2) If the tools don't correspond with the standards according to paragraph 1) (also called "flawed tools" in the following) , the supplier must refinish the flawed tools within the appropriate period fixed by the purchaser. If the rework is not successful in the space of the deadline or a rework by the supplier isn't possible or economically reasonable, the purchaser shall be, at his own discretion, entitled to perform the repair himself or by a third party or to cancel the contract.
- 3) The warranty period shall be 36 months from the release of the initial samples for the batch fabrication on, if no other period is agreed in the respective tool order.
- 4) Apart from the rights in paragraph 2), the supplier shall be liable towards SD, for all damages and costs that arose in accordance with the flawed tools. This also includes costs for the analysis and prevention of damages, like sorting, test and transport costs.
- 5) Apart from that the provisions of law applies.

## **XII. Functional Guarantee**

- 1) If the supplier produced the tools because of a tool order by SD for the purpose of production for SD, he shall provide the guarantee for the flawless viability of tools during their usage. This especially applies for an agreed minimum production quantity. If the agreed production quantity can't be produced with a tool, especially because of tool failure or severe attrition, the supplier is obliged to produce a replacement tool at his own charge. Regarding the property in replacement tools, the regulations of paragraph IV. apply.
- 2) If the tools which have been surrendered to the supplier by SD weren't produced by the supplier or by his order, the supplier must check if they are qualified for the contractually agreed delivery during the surrender of the tools by SD and execute an offer about the required rehabilitation measures to SD. With the performance of the rehabilitation measures ordered for him by SD, the supplier will provide the guarantee for the viability of the tools totaling paragraph 1.

## **XIII. Non-Disclosure**

The supplier commits himself to keep all commercial and technical documents, information and dates by SD which become accessible in the frame of a tool order, in confidence and not to publish or to otherwise announce them and not to use them for another cause than for the production of the tools or parts for SD. This doesn't apply if it provably acts as an obvious interest. The supplier ensures that his subsuppliers, representatives and employees are respectively bound to secrecy.

## **XIV. Notice to Terminate**

- 1) SD shall be entitled to terminate the respective tool order alongside other legal rights of termination always fully or partly in writing,
  - a) if the tools are not yet completed. In this case SD must refund the necessary expenses that, until the date of termination, provably and directly arose out of the tool order up to the amount of the agreed reward. Performance or compensation claims in addition to this aren't due to the supplier, because of the contract,
  - b) If the supplier becomes defaulting and doesn't fix such an infringement of a contract within 10 days or,

- c) In case of a request for an opening of the insolvency procedure against the supplier,
  - d) If the controlling share on the supplier's interests changes or the entire property or compartment are transferred to a third party,
  - e) SD's customer fully or partly ends the project for which the tools were needed or changes it so much that the tools are not needed anymore.
- 2) In case of termination, the supplier will return the whole of SD's property including the tools and documentation to SD, on demand by SD, paragraph VI. applies respectively.
  - 3) If services that weren't property to SD before the termination, were performed by the supplier for SD in the frame of the tool order, SD shall be entitled to acquire them. The price serves the respective tool order according to the level of completion. Financial contributions already paid in the frame of the tool order will be cleared at this. These principles concerning the supplier's payment respectively apply in case SD is already owner of the services before the termination.
  - 4) If usage rights are conferred to SD especially in the frame of paragraph IV. of this contract, these usage rights will remain in the favor of SD, even after this independent of an ensued termination.

**XV. General Provisions**

- 1) The whole correspondence for these conditions is to be held with the purchase of SD only.
- 2) Subsidiary agreements, changes and additions to these General Terms and Conditions of Tools are only effective, if approved by SD in writing. This also applies to changes of the requirement of the written form.
- 3) If a regulation of these General Terms and Conditions of Tools or further agreements made is or will be ineffective, the effectiveness of the General Terms and Conditions of Tools or the further agreements made won't be affected by this. The affiliates are obliged to replace the ineffective regulation with an economically preferably matching arrangement.
- 4) If these General Terms and Conditions of Tools don't contain expressive regulations, SD's General Terms of Conditions of Purchase shall apply. In case of a contradiction of one of these two policies, these General Terms and Conditions of Tools come first because they are more particular.