

## General Terms and Conditions of Purchase

### Preamble:

Hertwich Engineering GmbH (hereafter "Hertwich"), a company of the SMS group, is active worldwide in the design, supply, construction and commissioning of machinery and equipment for the aluminium industry, foremost aluminium casthouses.

### I. General

All deliveries and services (including prospective ones) are based on these General Terms and Conditions, complemented by any separate signed contractual agreements. Any other terms and conditions of the contractor, regardless of whether contradicting or supplementary, do not become part of the contract and are not binding, even if Hertwich does not expressly contradict them.

### II. Orders and their acceptance

For the conclusion of an effective order contract, a written order by Hertwich, as well as a corresponding written order confirmation by the contractor, is required. The contractor shall send this order confirmation to Hertwich without undue delay. In any case, this order confirmation shall be deemed to have been issued and the order contract shall be deemed to have been concluded if the contractor does not object to an order within 10 working days from order's receipt.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with Hertwich's written confirmation.

### III. Price and securities

Agreed prices are fixed prices and are quoted free delivery to the point of use, including packaging and freight charges, as well as the applicable value added tax. If prices are agreed as per Incoterm EXW (Ex Works), Hertwich shall only cover the lowest freight charges. All costs incurred up to handover to the carrier, including loading and excluding cartage, shall be borne by the contractor. The agreement on the place of fulfilment shall remain unaffected by the type of pricing. Hertwich reserves the right to acknowledge excess or short deliveries.

Deliveries and/or services exceeding the scope of delivery/service require an additional written offer and may only be binding based on a separate written order by the Hertwich.

The contract price includes any customs duties, local taxes, import duties, fees, levies, or other charges which may be brought on by authorities in the contractor's country or any transit country. In case such taxes and dues are incurred, including source tax / withholding tax, they shall be borne and paid by the contractor.

If bank guarantees are required, they shall be issued on the respective gross-amount of the advance payment value.

### IV. Legal provisions; trade terms

Insofar as these General Terms and Conditions of Purchase do not comprehensively regulate the legal relationship between the parties, the legal provisions of the applicable law shall apply.

The agreed delivery clauses shall be interpreted in line with the INCOTERMS 2020.

### V. Health, safety, and environment

Regarding the delivery item and/or services provided, the contractor shall be obliged to take all necessary precautions for environmental protection, health and safety protection, as well as accident prevention. Contractor must observe all regulatory and legal requirements in this regard.

The contractor undertakes to employ environmentally friendly products and processes for his deliveries/services and for subcontracting or ordering ancillary services of third parties within the scope of his economic and technical possibilities.

The contractor is liable for the environmental compatibility of the delivered products and packaging materials, and for all consequential damages resulting from the violation of his statutory disposal obligations.

At Hertwich's request, the contractor shall issue a certificate of composition for the equipment to be or already delivered.

### VI. Standards

The equipment must conform any relevant standards (if they exist for said equipment) and these shall be observed in the following order of priority:

- Hertwich's project's specifications
- Manufacturing regulations, ISO, IEC, EN, DIN, VDE, as well as technical regulations of other regulators.
- VBG accident prevention regulations (German "Vereinigung der Berufsgenossenschaften")
- Law on Technical Work Equipment (Equipment Safety Act, German "Geräte- und Produktsicherheitsgesetz")
- Machine safety DIN EN 292 and DIN EN 294
- EC Machinery Directives (if applicable)
- Other applicable standards

If deviations from a standard or the specified order of priority are required for in an individual case, the contractor shall be obliged to obtain Hertwich's written consent, whereas said consent shall not affect the contractor's warranty obligations. Basic safety and health requirements must be observed when designing and constructing machines in accordance with the applicable EC Machinery Directives. All required documentation, explanations, tests and labelling in accordance with these directives are also included in the scope of delivery/service.

### VII. Delivery dates and delay

The agreed delivery dates are binding.

If the contractor becomes aware that the delivery date will not be met, contractor must, without delay, inform Hertwich of said expected delay.

Partial deliveries and/or deliveries before the agreed date require Hertwich's prior consent (shipment release). The early provision of deliveries and/or services shall not give rise to any premature payment claims. If the contractor renders deliveries and/or services prematurely without Hertwich's consent, Hertwich reserves the right to invoice the contractor for the associated costs and/or damages incurred (warehouse rent, etc.).

If the contractor incurs a delay in delivery, Hertwich shall be entitled, after expiry of a set grace period, to either: (a) demand contractual fulfilment and claim damages for late delivery; or (b) to withdraw from the contract and claim damages for non-performance.

Unless otherwise agreed in individual contracts, in case of a delay in delivery or services, contractor shall pay a contractual penalty of 1% of the order value per commenced week, up to a maximum of 10% of the respective order value. This contractual penalty shall not waive the obligation of contractual performance nor the obligation to compensate for any damages beyond said amount.

The place of performance for the delivery shall be the point of receipt specified by Hertwich.

### VIII. Shipping

Unless otherwise agreed in individual contracts, the contractor shall be responsible for and bear the labour and material costs for loading the equipment, for issuing the shipping documents, as well as for the packaging customary for the delivery modality required. The goods are to be correctly packaged for transportation using environmentally friendly and recyclable materials.

The weight of the goods determined by railway officials or on Hertwich's calibrated scales shall apply for shipment processing. The weight specified must be stipulated in the accompanying documents for all shipments. In the case of on-call deliveries or intermediate storage at Hertwich's request, proper storage and insurance must be provided by the contractor.

The invoice, delivery note, and shipping notice are to be sent to Hertwich in due form.

The contractor shall be liable for the consequences of incorrect bills of lading, tariff regulations, and inadequate packaging. The shipping notice must be submitted immediately upon dispatch of each individual consignment. If the designated receiving point, department, order number, subject reference or issue note is missing in the shipping documents, all costs arising from this shall be borne by the contractor.

**IX. Guarantee**

The contractor guarantees that the equipment/service is manufactured/performed in accordance with the order, free of defects or bad workmanship, and is suitable for the intended use and purpose. Furthermore, the contractor guarantees that the design, functionality, as well as the assured properties, correspond to state-of-the-art technology at the time the order was placed, that the equipment/service is manufactured/performed in accordance with the applicable regulations, using new materials of premium and suitable quality.

Unless otherwise agreed, the contractor shall be liable for a period of 24 months following acceptance of the equipment or performance of the service.

Irrespective of whether the defects for which the contractor or his subcontractors are responsible could have been detected earlier, the contractor undertakes to remedy these defects within a reasonable period of time to be specified by Hertwich. At Hertwich's sole choice, the equipment shall be repaired, or re-delivered, or the services shall be re-performed, in any case free of charge for Hertwich and including incidental and shipping costs.

Without prejudice to other rights in contract or in applicable law, Hertwich shall be entitled, should the contractor fail to meet his obligations within the specified period, or should it be unable to meet them in a form acceptable to Hertwich, to remedy defects or damages directly, and/or to commission third parties to remedy these (both at the contractor's sole expense) and/or to invoke other options provided by applicable law for this purpose -in particular withdrawal, loss of value, or compensation-. The obligations of the contractor shall remain unaffected.

In the event of improvement, replacement and/or subsequent delivery, the guarantee period for the respective scope of delivery/service and the associated function shall restart and be 24 months following a successful resumption of operations.

In the event of a hidden defect, the guarantee period shall not commence until the defect can be objectively identified. In the case of goods that are usually left in their packaging until use, defects that only become visible when the packaging is removed shall be considered hidden defects.

**X. Property rights of third parties**

The contractor guarantees that the delivery and use of the delivery item does not violate the property rights of third parties, in particular patents, utility models, copyrights, and competition rights, and will indemnify and hold us harmless from all claims made by third parties.

**XI. Drawings, implementation documents, tools - maintenance**

Drawings and other documents, devices, models, tools, and other production materials, which are handed over to the contractor, shall remain Hertwich's property. All documents must be kept secret from third parties. The ownership of tools and other production materials paid by Hertwich shall be transferred to Hertwich.

The aforementioned items may neither be scrapped nor made available to third parties - e.g. for production purposes - without Hertwich's written consent. They may not be used for purposes other than those contractually agreed - e.g. delivery to third parties. During the execution of the contract, they shall be carefully stored on behalf of Hertwich by the contractor and at contractor's expense.

The care, maintenance and partial renewal of the aforementioned items are subject to the respective agreements concluded between the contractor and Hertwich. Hertwich reserves all rights to any drawings and products manufactured according to Hertwich's specifications, as well as to all processes developed by Hertwich.

**XII. Payment and invoicing**

Unless otherwise agreed in individual contracts, the following payment terms are valid:

- (a) For deliveries, 100% upon delivery as per the agreed Incoterm
- (b) For services, 100% upon full performance of the services. In case of services exceeding a performance period of 1 months, a monthly invoice and payment is agreed.

Unless otherwise agreed in individual contracts, Hertwich shall be entitled to pay (a) either two weeks after delivery and receipt of the invoice, with a 3% early payment discount, or (b) on the 25th day of the month following delivery and receipt of the invoice (without an early payment discount).

The last payment or installment shall only be released after submission of a comprehensive final invoice under the conditions stipulated in the order, and after fulfilment of all agreed terms.

Payment shall not constitute an acknowledgement of the correctness of the delivery, documentation, and provision of services, and thus not constitute a waiver of the Hertwich's claims arising from defects in performance due to liability, guarantee, compensation for damages, etc.

**XIII. Assignment, set-off and right of retention**

An assignment of claims against Hertwich shall only be permissible upon Hertwich's prior written consent. This shall also apply to undisclosed assignments.

The contractor shall not be entitled to set off alleged claims against Hertwich without Hertwich's prior written consent unless the claim has been recognised by law.

Rights of retention on the part of the contractor shall be excluded unless they derive from the same contractual relationship.

**XIV. Group offsetting clause**

Due, undue, and future claims may be offset against counterclaims arising from all business transactions of the contractor with Hertwich or other group companies (stake of at least 50%) belonging to the same corporate group as Hertwich.

**XV. Confidentiality**

The contractor is obliged to keep strictly confidential all information made available by Hertwich in conjunction with the contractual relationship or within the scope of their business relationship, irrespective of its type or origin, as well as all commercial and technical documents. They may not be published or duplicated, used for any other purpose than the execution of the order nor made available to third parties without Hertwich's written consent. Publication of extracts thereof is also prohibited. The contractor shall be liable, without limitation, for any damages resulting from the non-compliance with this obligation.

**XVI. Limitation period**

Claims against Hertwich arising from, or in connection with, the order shall lapse after expiry of a two-year period from the date of receipt of the delivery and the invoice.

**XVII. Priority rule**

In case of doubt, the German version of any document exchanged between the parties or in any way part of this contract shall prevail.

**XVIII. Subcontracting**

Subcontracting is not allowed unless prior written approval by Hertwich. The contractor shall inform Hertwich (in reasonable time) of any intended subcontracting of essential equipment and/or services. The approval shall not be unreasonably withheld.

The contractor shall be fully liable for his subcontractors, particularly regarding the following criteria: quality and environment, technical cross-standardization, subcontractor demands, customs endorsements, customs transit, import and transport, etc.

**XIX. Termination**

Without prejudice to any other clause contained herein, the contractual relationship may be terminated for convenience at any time by Hertwich.

**XX. Code of Conduct**

The contractor shall comply in all respects with the laws and regulations of the applicable legal system, including, though not limited to, regulations on antitrust law, corruption prevention, data protection, and export control.

The contractor declares that he is familiar with, and that he shall comply with SMS group Supplier Code of Conduct, the latest version of which can also be downloaded from the Internet site [www.sms-group.com](http://www.sms-group.com).

If there is any suspicion that Hertwich's compliance principles and requirements are not being adhered to, Hertwich reserves the right to demand information on the relevant facts and circumstances and, if required, to conduct his own investigations, for which the contractor shall provide his support. If the contractor violates one of the obligations mentioned in Section 16 of this document, or if a claim is made against Hertwich, Hertwich shall be entitled, without prejudice to further claims, to demand compensation, terminate the contract or withdraw from it, and the contractor shall indemnify Hertwich against all claims.

**XXI. Severability clause**

In case any of the provisions of this contract is or becomes ineffective, invalid, or unenforceable, this shall not affect the validity or enforceability of the remaining provisions of this contract. The ineffective, invalid, or unenforceable provision shall be replaced by a legally valid and enforceable provision which is as close as possible to the will and intended purpose of the invalid and / or unenforceable provision and / or the will and intended purpose of the parties. The same shall apply respectively in case of omissions and/or ambiguities / discrepancies.

**XXII. Jurisdiction and applicable Law**

These terms and conditions and any contracts concluded hereunder shall be governed by the substantive laws of Austria under exclusion of conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any and all disputes arising out of or in connection with these terms and conditions and any contracts concluded hereunder shall be finally and exclusively settled by the competent court, *ratione loci* and *ratione materiae*, of Ried im Innkreis, Austria. However, Hertwich shall also be entitled to sue the contractor at any other court of its choice, which may have jurisdiction under national or international law.

**IN THE EVENT THAT INDIVIDUAL TERMS BECOME INEFFECTIVE BY COMPELLING LAW, ALL OTHER TERMS HEREIN SHALL REMAIN BINDING.**