

1.0 Basis for contracts

1.1 The present Standard Terms of Purchase (STP) apply to all business relationships with our business partners and suppliers (hereinafter "Suppliers"). The STP apply only if the Supplier is an entrepreneur under section 14 of the German Civil Code (BGB), a public law legal entity or a public law special fund.

1.2 The Customer places orders on the basis of these Standard Terms of Purchase. Other terms and conditions will not form part of a contract, even if these are not expressly rejected. The fact that the Customer accepts delivery/service without expressly rejecting such terms and conditions may under no circumstances be taken to imply that the Customer has accepted the Supplier's terms of supply.

1.3 No payment will be made for visits or for the preparation of offers, projects, drafts or sample supplies.

1.4 If the Supplier fails to accept the order in writing within 7 calendar days of its receipt, the Customer will be entitled to withdraw it. If the Supplier accepts the order subject to modifications, it must clearly draw the Customer's attention to the latter. A contract will only arise if the Customer consents to these modifications in writing. Call orders will become binding at the latest 10 calendar days after receipt if they are not rejected by the Supplier in writing.

1.5 Individual agreements reached with the Supplier in a specific case (including subsidiary terms, amendments and additions) will in all cases take precedence over these STP. The exact terms of such agreements will be as specified in a written contract and/or the Customer's written confirmation.

1.6 Orders, call orders and amendments thereto may also be placed electronically / by remote data transfer.

1.7 Indications that legal provisions apply can only serve as clarification. Statutory provisions will therefore apply even without such clarification, unless they are specifically modified or expressly excluded in these STP.

2.0 Prices, terms of payment and invoicing

2.1 Prices agreed are fixed until the contract has been executed. Package prices include all goods/services covered by the contract.

2.2 Work charged on a time and cost basis will only be paid for if the Customer ordered it in writing and confirmed timesheets are submitted.

2.3 Unless otherwise agreed, the Customer will pay the purchase price within 14 days following delivery of the goods and receipt of the invoice subject to 3% discount or within 60 days net. The effective date of the Customer's payment for this purpose will be the date when the Customer's bank transfer instruction is received by the latter's bank.

2.4 One copy of each invoice must be submitted, quoting the invoice address stated in the order. It must be possible to check invoices against the prices quoted in the order. Invoices not properly submitted will not count as having been received by the Customer until they have been corrected.

2.5 The payment period will begin to run on the day when the invoice is received, but not before the receipt of goods free of defects, formal acceptance of services and, in the case of the contractually agreed supply of documentation, the handover of the latter.

2.6 If advance payments have been agreed, the Supplier must provide appropriate security in the form of an absolute guarantee not subject to any time limit from a bank approved by the Customer, with the defences of failure to pursue remedies, contestability and offsetability being waived.

3.0 Performance, delivery, passing of risk, late acceptance

3.1 Goods and services shall be delivered free to their specified destination.

The Supplier must bear all costs and risk associated with loading and transport and packing costs.

3.2 For compliance with delivery or performance deadlines, goods must be received by the deadline in perfect condition at the place specified by the Customer. The risk will pass to the Customer at that moment.

3.3 If it becomes apparent to the Supplier that it will be impossible to meet an agreed deadline, it must inform the Customer of this immediately in writing, stating the reasons and the likely duration of the delay.

3.4 Failure on the part of the Customer to supply necessary documentation will only represent circumstances for which the Supplier cannot be held liable if the latter has issued a written reminder about the documentation and not received it within a reasonable period. The Supplier must take appropriate steps to minimise delays.

3.5 Acceptance of late delivery or performance does not imply any waiver of damages or any other claims.

If the Supplier delivers earlier than agreed, the Customer reserves the right to return the goods at the Supplier's expense. If the Customer waives its right to return goods, the Supplier must bear the cost and risk of their storage by the Customer until the delivery date. Payment will not be made until the agreed due date.

The Customer will only accept the volumes and unit numbers ordered. Greater or lesser quantities will only be accepted by agreement.

3.6 The Customer reserves the right to monitor and check the progress of work, its compliance with the terms of the order and the materials used. The Supplier must supply the Customer's representative with all necessary information. Any checks undertaken will not relieve the Supplier of its warranty or other liabilities.

3.7 Order numbers, article numbers, delivery volumes and delivery address must be stated on all confirmations of order, shipping documents, invoices and measurement and testing/inspection records. If one or more items of information are not supplied, and processing within the framework of the Customer's normal business procedures is delayed as a result, the payment deadline specified in the Customer's order will be postponed by the duration of the delay.

4.0 Accident prevention

4.1 In supplying its goods and services, the Supplier must take the measures necessary to prevent accidents, to keep construction sites safe for traffic and ensure in particular that the requirements of the German Health and Safety at Work Act, the German Act on Technical Working Materials and Consumer Products (GPSG), the relevant accident prevention rules, the regulations relating to dangerous substances and generally accepted standards of health and safety at work are complied with.

5.0 Contract penalty

5.1 If the Supplier is to blame for a deadline not being met, the Customer will be entitled to demand a contract penalty equal to 0.5% of the order total (net) per calendar week or part of a week, subject to a maximum total of 5%.

5.2 The Customer is entitled to demand the contract penalty in addition to performance. The Customer is also entitled to claim additional damages on the grounds of the Supplier's late performance. In such a case the contract penalty must be counted towards the late performance damages payable by the Supplier. If the Customer accepts late performance, it must claim the contract penalty at the latest with the final payment.

5.3 If contract deadlines are changed by mutual agreement, the above-mentioned contract penalty will also apply to the new deadlines.

6.0 Confidentiality and reservation of title

6.1 The Customer reserves title to and copyright in illustrations, plans, drawings, calculations, instructions, product descriptions and all other documents/records etc. Such items may only be used for the purpose of contractual performance and must be returned to the Customer on the completion of the contract.

6.2 The contracting parties hereby undertake to treat as business secrets all commercial and technical details not in the public domain which they acquire knowledge of as a result of this business relationship.

6.3 Subcontractors and service providers who become involved in the execution of a contract, and their employees, must be placed under a corresponding confidentiality obligation.

6.4 Contracts must be treated as confidential. Any disclosure, e.g. in reference lists or advertising materials referring to business connections with the Customer, is subject to prior written consent.

6.5 This confidentiality obligation will continue in force for a further five years following the completion of a contract. However, it will cease to apply if and to the extent that manufacturing know-how contained in the documents/records supplied has become public knowledge.

6.6 The above applies accordingly to substances and materials (e.g. software, finished and semi-finished products), tools, patterns/templates, samples and all other items supplied to the Supplier by us for manufacturing purposes. Unless they have been processed, such items must be stored at the Supplier's expense and the usual standard of insurance cover against loss and damage maintained.

6.7 Any processing, mixing or combination by the Supplier of items provided by the Supplier is carried out on the Customer's behalf. If a third party's title survives the processing, mixing or combination of its items with items provided by us, the Customer will acquire joint title to the new item created in proportion to the Customer's contribution.

6.8 Reservations of title by the Supplier will only apply to the extent that they relate to the Customer's obligation to pay for the products to which the Supplier expressly reserves title. Extensions of the scope or duration of title reservation are in particular not permitted.

7.0 Defects in items supplied, statute of limitations

7.1 The Customer's rights in the case of material or legal defects in goods (including incorrect or insufficient deliveries, inappropriate assembly/installation and incorrect assembly/installation or operating instructions) or any other breach of obligation by the Supplier are as provided by law unless otherwise stipulated below.

7.2 Under the relevant legislation, the Supplier is in particular responsible for ensuring that when the risk passes to the Customer the goods are of the agreed quality. An agreement as to quality is constituted in particular by those product descriptions which – in particular by specification or reference in the order – form part of the relevant contract or are integrated into the contract in the same way as these STP. It makes no difference here whether the product description comes from the Customer, from the Supplier or from the manufacturer.

Contrary to section 442 (1) p. 2 of the German Civil Code (BGB), the Customer's entitlement to claim for defects will not be limited even if the Customer was grossly negligent in failing to identify the defect on the conclusion of a contract.

7.4 The Customer's obligations as a merchant as defined by German legislation with regard to inspections and the submission of complaints is as provided by law (sections 377, 381 of the German Commercial Code (HGB)), subject to the following: The Customer's obligation to inspect goods is limited to defects which would be clearly apparent on an external inspection of the goods, including the shipping documents, carried out on receipt (e.g. transport damage, incorrect deliveries, deliveries of less than the agreed quantity).

If a formal acceptance procedure has been agreed upon, there is no obligation to inspect goods. Otherwise, it will depend on the extent to which an inspection is feasible in the normal course of business, given the circumstances of the individual case.

This is without prejudice to the Customer's right to complain about defects discovered later. The notification of a defect will in all cases be regarded as immediate and punctual if the Supplier receives it within 10 working days.

7.5 The Supplier shall rectify defects - including failure to comply with guaranteed data and the absence of warranted characteristics - which are notified during the warranty period immediately and at no charge (subsequent performance). The Supplier shall bear all the costs incurred in the process of rectifying defects, including where such costs are incurred by the Customer, including but not limited to the cost of investigations, work and material costs, dismantling and reassembly costs as well as the costs of transporting and exchanging defective parts. The Supplier must also bear any additional costs incurred when the delivery item is transported to a location other than the place of performance. This does not apply, however, if in such cases disproportionate costs are incurred.

The Supplier must also bear the costs incurred for the investigation and rectification of defects, even if no defect turns out to have actually been present. Our liability for damages in the case of unjustified demands remains unaffected; in this respect we shall only be liable if we recognise or were grossly negligent in failing to recognise that there was no defect.

7.6 If the Supplier fails to fulfil its obligation to remedy a defect – at our discretion either by rectifying the defect or by replacing it with a perfect item – within a reasonable period specified by the Customer, the Customer will be entitled to rectify the defect itself and claim compensation for or an appropriate advance towards the necessary costs. If the Supplier's attempt to remedy a defect fails or if it is unreasonable to expect the Customer to wait for the Supplier to act (e.g. due to particular urgency, a threat to operating safety or a threat of disproportionate losses), it will not be necessary to set a deadline; the Supplier must be informed immediately, if possible beforehand.

7.7 In the event of a material or legal defect the Customer is also entitled by law to reduce the purchase price or to rescind the contract. The Customer is also entitled by law to claim damages and costs.

7.8 Contrary to section 438 (1) No. 3 of the German Civil Code (BGB), the standard limitation period for claims for defects is 3 years from the passing of risk. If a formal acceptance procedure has been agreed upon, the limitation period will begin to run on formal acceptance. This 3-year limitation period also applies accordingly to claims for legal defects, with the statutory period of limitation for third-party claims to physical surrender (section 438 (1) No. 1 BGB) remaining unaffected; in addition, claims based on legal defects will not expire under any circumstances as long as the third party remains in a position to claim against the Customer – in particular because its claim is not yet statute-barred.

8.0 Producer's liability

8.1 If the Supplier is responsible for damage to a product, it must indemnify us against third-party claims to the extent that the cause lay within its sphere of control and organisation and it is itself liable to third parties.

8.2 Within the framework of its obligation to indemnify, the Supplier must pursuant to sections 683, 670 of the German Civil Code (BGB) reimburse expenditure incurred as a result of or in connection with a third-party claim, including recall campaigns conducted by the Customer. As far as possible and reasonably to be expected, the Customer will inform the Supplier of any recall campaigns and give it an opportunity to comment. This is without prejudice to any further statutory claims.

8.3 The Supplier must take out and maintain product liability insurance providing cover of at least EUR 3 million per person / per material loss.

9.0 Other liabilities

9.1 The Supplier is also liable as prescribed by law for breaches of obligation and for material damage, personal injury and financial losses inflicted on the Customer in connection with the execution of an order.

9.2 The Supplier must take out adequate public liability insurance to cover the relevant risks and supply evidence of this on request by the Customer.

10.0 Environmental protection

10.1 The Supplier hereby undertakes to use environment-friendly products, processes and packaging to the extent economically and technically feasible in the supply of its goods and services and in the supply of goods and subsidiary services by third parties, and to comply with the relevant environmental protection rules in all activities undertaken for the purpose of executing the contract.

10.2 The Supplier must dispose of all waste which arises in the execution of orders in accordance with the relevant legislation, on its own responsibility and at its own expense.

11.0 Concluding terms, choice of law and legal venue

11.1 If individual provisions of these Standard Terms of Purchase are invalid, this shall not affect the validity of the remaining terms.

11.2 The place of performance for goods and services is the delivery address / place of use specified by the Customer.

11.3 The laws of the Federal Republic of Germany apply exclusively, with the UN Convention on the International Sale of Goods being excluded.

11.4 The language of contract is German. All correspondence and all other records and documents must be formulated in German. If the contracting parties also make use of another language, the German wording shall take precedence.

11.5 The exclusive legal venue for all present and future claims arising out of the business relationship with merchants as defined by German law, including claims relating to bills of exchange and cheques, is the relevant court at STOPA's location in 77855 Achern.

	Standard Terms of Purchase STOPA Anlagenbau GmbH	Updated 2 January 2013 Revision 05 Page 5 of 5
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