

# General Terms and Conditions for the Supply and Delivery of Goods and Services by Suter Industries AG

## General Terms and Conditions of Supply and Delivery

### 1. Scope of validity

These General Terms and Conditions for the Supply and Delivery of Goods and Services ("GTCs") form an integral part of the contract entered into between Suter Industries Ltd (former Suter Racing Technology Ltd), Turbenthal ("SI") and the customer and apply to all services and products that SI provides to the customer. The latest and binding version of the GTCs is published on the internet under [www.suter-industries.ch](http://www.suter-industries.ch) and can be ordered from the registered office of SI anytime. Deviating terms and any conditions in contradiction to these GTCs shall only be valid if expressly acknowledged otherwise by SI in writing.

### 2. Signing of contract

The contract shall be deemed to have been entered into if customer has confirmed its acceptance of SI's offer in writing or if SI has confirmed its acceptance of customer's order in writing.

### 3. Scope of supplies and services

The supplies and/or services are exhaustively specified in SI's order confirmation or SI's offer including appendices thereto. Supplies and services, which are not specified therein (e.g. operating manuals in other languages than English or German), will be charged separately.

#### 3.a In particular Calculation Services

In the event the supplies and/or services of SI include calculation services, following additional provisions shall apply: specifications and data provided by the customer for the calculations will not be verified by SI, unless otherwise agreed in writing. If the calculation services are based on numerical simulation (structural mechanics calculations), the customer hereby accepts, that it is in the nature of numeric simulations that restrictions and limitations of numeric and physical modeling may lead to deviations between the results of a simulation and the respective experimental results. The calculation services of SI are analytical and advisory in nature and are not a substitute for rigorous and comprehensive prototype testing by the customer of products or components intended for sale or use by the customer. The customer has the sole and final responsibility for determining the accuracy, correctness, and suitability of the services for any purpose. The drafting of an additional detailed report by SI on the calculation services has to be agreed upon separately.

#### 3.b In particular Development of Prototypes

In the event the supplies and/or services of SI include the development of customer-specific product samples, models, prototypes or pre-series products ("Prototypes") the following additional provisions shall apply unless otherwise agreed in writing:

- a. The technical implementation of Prototypes and possible reports thereof are preliminary;
- b. The technical data of Prototypes are subject to change;
- c. The Prototypes are not yet ready for serial production;
- d. Unless SI is fully in charge of building and assembling the Prototypes, no guarantee shall be given for the Prototypes to have the properties stated in the appropriate offer or order confirmation. In such case SI shall have no liability for damages to the Prototypes;
- e. In case Prototypes have to undergo a specific testing method according to the offer or order confirmation (e.g. testing on test benches), SI shall have no liability for damages to the Prototypes or other goods if these tests have not been conducted fully by SI.
- f. The Prototypes shall only be put into operation, used or tested in such a manner that in case of malfunction or failure no person can be injured and no machinery or other goods can be damaged.
- g. The customer shall bear the risk of the technical feasibility and economic exploitability of Prototypes developed by SI.

- h. The writing of an additional detailed report by SI on the development of the Prototypes has to be agreed upon separately.

### 4. Technical documents, software and know how

Technical documents (e.g. drawings, plans, descriptions, photos, images) shall only be binding to the extent as having been explicitly guaranteed in SI's order confirmation or in SI's offer.

### 5. Right of use/Intellectual property rights

The technical documents, drawings, photos, images, descriptions, prospects created by SI remain SI's intellectual property. They may not be copied or used for customers manufacturing nor disclosed to third parties without SI's written approval. The supplies may not be used for the production of workshop drawings and/or customer manufacturing, nor for the purpose of third party manufacturing either. Any intellectual property rights of the supplies, in particular the rights of use and exploitation, remain with SI. The scope of contractual services will be excepted from such provisions.

### 6. Software

The intellectual property rights of software individually developed for a customer shall pass to the customer upon receipt by SI of full payment in accordance with the contract. The intellectual property rights of components developed by SI, which will be used for the customer's software ("SI-Components") remain fully with SI. SI grants to customer free of charge the permanent, worldwide, non-exclusive, non-transferable and non-sublicensable right to use the SI-Components for the agreed purpose. The customer grants to SI free of charge a worldwide and permanent, non-exclusive, non-transferable and sub-licensable back-license for the use of the software individually developed for the customer. SI may at its discretion continue to use the gained know-how in connection with the software and to further develop the software.

The rights to further developments, modifications, add-ons or alterations of the software individually developed for the customer remain with SI. SI is not obliged to inform customer about any software developments and the customer has no right of any kind to these software developments.

The intellectual property rights of software developed by SI and licensed to more than one customer ("Our Software") and the associated know-how of all kind and the rights of use thereto belong to SI. Without written permission from SI, customer shall not further develop, adapt, disassemble, decompile or reverse engineer Our Software. The intellectual property rights and rights of use of Our Software remain with SI or its licensor even if the customer further develops, adapts, supplements or otherwise modifies the software or the know-how records. The customer must affix all modifications and copies with the same protective copyright label as on the original. The customer may only use the software and know-how for the agreed purpose; the economic use for other purposes and the passing on to third parties is prohibited.

### 7. Regulations at place of destination

It is the customer's responsibility not later than during the placement of the order, to draw SI's attention to all statutory, official, technical and other regulations at the place of destination, which must be observed for the performance of the contract or in connection with the delivery or the nature of the supplies (e.g. Ex zone). In case of any omission, the customer shall bear the additional costs for any adjustment work.

### 8. Prices

Unless otherwise agreed, all prices shall be deemed to be net ex works in Turbenthal/Switzerland, in freely available Swiss francs without any deductions whatsoever (e.g. taxes, fees, levies, customs duties, freight charges, packing, insurance premiums, installation, entry into service, training and maintenance).

SI reserves the right to adjust the prices after the signing of the contract in case:

- a. SI's wage rates, material prices or related costs change between the signing of the contract and the contractually agreed performance;
- b. the delivery time has been subsequently extended due to any reason not attributable to SI;
- c. the nature or the scope of the agreed supplies or services has changed;
- d. the supplies had to be changed as any documents furnished by the customer were not in conformity with the actual circumstances or were incomplete.

#### **9. Terms of payment**

Payments shall be made by the customer in Swiss francs at SI's registered office according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.

The payment dates must also be observed if the delivery, assembly, the putting into operation or the acceptance of the supplies or the performance is delayed due to reasons, for which SI is not responsible, or if inessential parts are missing or if subsequent improvement is necessary, which do not make the use of the supplies impossible.

If a prepayment or collateral is not provided at the conclusion of the contract as stipulated, SI is entitled to rely on the validity of the contract or to withdraw from the contract and to demand compensation for damages in both cases.

If the customer is in delay with any payments, or SI has serious grounds to fear that payments from customer will not be received fully or on time due, SI is entitled to suspend performance of the contract and to retain all deliveries and services until new payment and delivery conditions have been agreed and SI has received sufficient collateral. If such agreement cannot be reached with 30 days or SI has not received sufficient collateral, SI is entitled to withdraw from the contract and to demand compensation for damages.

If the customer does not adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date on which the payment was due at an interest rate of 5 per cent per annum. The right to claim further damages is reserved.

#### **10. Cancellation costs**

If the customers in violation of the contract withdraws from the contract, SI is entitled to claim 10% of the agreed price for the incurred costs in connection with process of the order and the loss of profit. The right to claim further damages remains reserved.

#### **11. Retention of title**

SI shall remain the owner of all supplies until it has received full payment in accordance with the contract. SI is authorized at the customer's expense to enter or notify the retention of title in the required form in public registers or similar records and to fulfil all corresponding formalities.

During the period of the retention of title, the customer shall, at his own cost, maintain the supplies and insure them for the benefit of SI against the usual risks. He shall further take all measures to ensure that SI's title is in no way compromised or rescinded.

#### **12. Delivery period**

The delivery time shall start as soon as the contract is entered into, all official formalities have been completed, and customer has delivered all necessary documents, materials and made all payments due in accordance with the order and has given any agreed securities and has fulfilled all other agreed obligations as stipulated in the contract. The delivery time shall be deemed to be observed if, by that time, SI has sent a notice to the customer informing him that the supplies are ready for dispatch.

The delivery time shall be reasonably extended without any damages at the expense of SI:

- a. if the information required by SI for the performance of the contract is not received in time, or if the customer subsequently changes it thereby causing a delay in the delivery of the supplies or services;
- b. if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment;
- c. if hindrances occur, which SI cannot prevent despite exercising the required care, regardless of whether they affect SI, the customer or a third party, such as natural events, war, riot, serious interruption of operations, accidents, labour conflicts, late or deficient delivery by subcontractors, actions or omissions by any authorities;
- e. if SI performs part delivery at very least.

In the event of non-compliance of delivery dates guaranteed in writing by SI, the customer is entitled to claim damages, contractual penalty or to withdraw from the contract only if it is expressly stipulated in the contract.

If delivery is postponed at customer's request for more than one month after the notification of the readiness for dispatch, SI is entitled to invoice to customer the costs for storage for every partial month in the amount of 0,5% of the price for the supplies to be delivered, not exceeding in total 5%.

#### **13. Examination and acceptance**

SI will check the supplies and services to the extent possible before delivery. If the customer requests a more in-depth inspection, the additional costs shall be borne by customer. Unless specific acceptance procedures have been agreed, the customer must check immediately the supplies and services and report to SI in writing any defects found within 5 days upon receipt of the delivery or service. If the customer fails in doing so, the supplies and services shall be deemed to have been approved and any warranty rights of the customer shall be forfeited. In the case of defects, the customer must give SI the opportunity to rectify the defects within a reasonable time. If defects are identified during the warranty period, which could not have been detected during careful acceptance inspection, the customer must immediately inform SI in writing; otherwise the delivery is considered to be accepted even as far as these defects are concerned.

The performance and the conditions of a specific acceptance procedure must be agreed in writing. If a specific acceptance procedure cannot be performed within the agreed period due to reasons, for which SI is not responsible, the delivery is considered to be accepted and the guaranteed properties are regarded as present and correct.

#### **14. Packaging**

Packaging will be charged by SI additionally and will not be taken back. If the packaging was declared as the property of SI, customer must return the packaging at his cost.

#### **15. Transfer of benefits and risk**

Benefits and risks shall pass to the customer at the latest upon dispatch of the delivery ex-works at Turbenthal/CH, even if the delivery is subject to special delivery clauses or including assembly is to be carried out, organised or managed by SI. If the dispatch is delayed for reasons not attributable to SI, the supplies to be delivered will be stored at customer's cost and risk.

#### **16. Transportation and insurance**

Special requests concerning dispatch, transport and insurance shall be communicated to SI in writing and in due time. The transport shall be at customer's expense and risk. Customer shall address complaints in relation to transportation to the last shipping agent immediately upon receipt of the supplies or the shipping documents.

Insurance against damages of any kind shall be the responsibility of the customer. If SI effects an insurance policy, it will

do that under mandate, for the account and the risk of the customer and on customer's request.

#### **17. Warranties**

The warranty period is 12 months. It starts when the supplies leave the works and, if SI undertakes the assembly, when the assembly is completed. Should dispatch or assembly be delayed due to reasons not attributable to SI, the warranty period shall expire at the latest 18 months after notice of readiness to delivery. The warranty period and statutory period of limitation are not renewed or extended upon the acknowledgement or remedy of a defect.

SI warrants that the supplies are delivered in good merchantable condition and have the guaranteed properties as stipulated in the order confirmation or in the offer. Excluded from the warranty are defects and disruptions which are beyond the control of SI (e.g. normal wear and tear, acts of God, careless handling, incorrect installation or assembly, excessive usage, use of the supplies in motorsports, unsuitable operating materials or extreme environmental conditions). Parts, components or assemblies developed and/or produced by SI for racing and declared as such ("**Racing Parts**") are excluded from the warranty entirely. After installation of these Racing Parts the warranty shall be limited to the replacement of faulty delivered goods. We explicitly point out that in the tough racing environment parts are exposed to increased stress which can lead to damaged or unusable parts causing possible consequential damages including, without limitation, loss of time, loss of profit and even pose a health risk for the user. SI takes no responsibility what so ever for such consequential losses should they occur.

For supplies consisting of single parts which have to be assembled prior to putting into operation ("**Assemblies**") as for example engines, Prototypes, clutches, chassis components etc. the warranty rights of the customer shall be forfeited if SI has not been fully in charge of building and assembling such Assemblies.

Should incorrect repairs or changes be made by the customer or a third party without the approval of SI, the warranty and liability expires prematurely; likewise, if the customer does not immediately take the necessary measures to prevent further damage, or if the customer does not immediately give SI the opportunity to remove the defects.

Engines, tuning products, Racing Parts, Assemblies and accessories ("**supplies**") will be delivered without a TÜV certificate. It is not warranted under contract that these will be suitable for use on public roads. The customer bears full responsibility for securing any administrative approvals and for the secure use of these products.

SI is only obliged to replace or rectify defective parts of supplies, if such defects are traceable to material, construction or manufacturing error. For third party supplied built-in materials or supplies the guarantee obligations of the respective supplier shall apply. SI will perform replacement or repair works at its discretion in SI's premises or at customer's place; Customer shall grant SI free access for that purpose. Any returns must be free of freight charges and must be previously approved by SI. SI is entitled, even in the case of approved returns, to charge up to 10% of the price as a handling charge. The rectification of defects by third parties may be carried out only with the written consent of SI.

If warranted properties are not or only partially fulfilled, the customer has the right to request cost-free repair from SI within a reasonable period of time. If the rectification is not successful or only partially successful, the customer shall have the right to an adequate reduction of the price.

#### **18. Limitation of liability and exclusion of liability**

SI warrants that the supplies are delivered in functional condition and comply with the guaranteed properties. Any further liability towards the customer for breach of contract on whatsoever grounds and the consequences arising therefrom, are

hereby expressly excluded. To the maximum extent permitted by law, the liability of SI is excluded for consequential damages, such as financial loss, loss of production, limited benefit, loss of orders, third party claims for contractual penalty, loss of profit or other indirect or implied damages.

#### **19. Operating safety / indemnity**

The customer is obliged to strictly comply with the operation manuals and the safety instructions handed over together with the supplies. Existing security measures and hazard warnings, notices or labels may not be removed and must be immediately replaced in case of imperfection. The customer is obliged to immediately inform SI in writing, if from the supplies could arise a risk or if a dangerous situation or an accident has occurred. If the customer does not comply with any and all obligations regarding operation safety, he shall fully indemnify SI for any and all third party claims for damages.

#### **20. Repairs / Services**

SI shall be liable for the careful execution of the works and services explicitly listed in the working reports. To the maximum extent permitted by law, any further liability, in particular in respect of the overall condition of the examined goods, will be excluded.

#### **21. Governing law**

The legal relationship shall be governed by and construed in accordance with the substantive laws of Switzerland, excluding the principles of conflicts of laws (IPRG) and the United Nations Convention on Contracts for the International Sale of Goods as of 11 April 1980.

#### **22. Jurisdiction**

The exclusive place of jurisdiction for all disputes arising from or in connection with the supplies or services and these GTCs shall be at the registered office of SI (currently Turenthal, Switzerland).