

General Terms and Conditions of Contract

of the Companies of the Showa Denko GROUP ("SDK") for Contracts with Businesses

These General Terms and Conditions of Contract apply in supplement to our offers and/or confirmations of contract. The customer's deviating terms of purchase order are hereby expressly contradicted; they shall not apply in relation to SDK.

I. Pre-contractual Services, Offer and Acceptance

1. Initial cost estimates, including drawings and any diagrammatic views required to elaborate such cost estimates, shall be delivered free of charge. If other documents are prepared in addition thereto upon your request (drafts, plans, drawings, calculations of strength and stability, etc.) which exceed the initial offer, and if SDK is not awarded the contract, SDK shall be entitled to charge reasonable compensation in accordance with the requested special expenditure of work.
2. It is agreed between SDK and you that all of the information, drawings, data, etc. mutually provided within the scope of our collaboration has been entrusted within the meaning of Sec. 18 Law Against Unfair Competition (UWG) to the respective other party and may be used exclusively within the scope of such collaboration. Any other use, including, but not limited to, a disclosure to third parties, is strictly prohibited.
3. Offers shall be valid for 4 weeks from the date of issue. Verbal agreements or commitments shall only be binding for SDK upon written confirmation.
4. Any conclusion of contract shall not take place until after a written confirmation of contract by SDK has been given.
5. Technical data and descriptions in SDK product information, instruction sheets, etc. are merely general guidelines. They are based on technical findings from laboratory experiments and various applications in practice, and thus are in no event to be considered warranted characteristics for the specific case of application.
6. SDK retains the right to fulfil contractual payment obligations through a SDK GROUP company. The contract partner hereby expressly consents to such fulfilment by a SDK GROUP company. Any restrictions on assignment or transfer of rights for the fulfilment of payment-obligations by SDK shall not apply.

II. Prices, Terms of Payment and Confirmation of Receipt of Intra-European Community Supplies

1. For the delivery of goods, prices are quoted net ex works and exclusive of packaging, freight, insurance and value-added tax and without any custom duties.

In the case of installation services to be rendered, prices are based on the statutory work hours or work hours under collective bargaining agreements which are applicable for SDK. If you request overtime, night work, work on Sundays and holidays, the overtime under statute or collective bargaining agreements shall be charged additionally.

In addition to the agreed prices for hourly rates, which are net prices, the costs for the travel to and from the site for SDK employees, the compensation for travel time and the daily allowance to be paid under collective bargaining agreements shall be paid at the respective applicable rates.

The delivery is carried out according to the trade term of the individual contract and is interpreted according to the INCOTERMS® 2010. If no specific agreement has been reached, all deliveries are made FCA from the delivering site of SDK.

2. Invoices are payable no later than 30 days after the receipt of the invoice without any deductions.
A set-off or right of retention in relation to SDK claims may only be exercised if the counterclaim is undisputed or has become final and absolute. Any and all costs of payment transactions shall be at your expense. SDK reserves the right to assign claims arising from our business relationship.
3. In principle, the supply of goods from Germany to another EU member state is exempt from VAT, as long as an appropriate proof that the goods have been received by the buyer (e. g. Confirmation of Receipt (*Gelangensbestätigung*)) can be provided by SDK to the German tax office according to § 17a German VAT Implementing Regulation (*Umsatzsteuer-Durchführungsverordnung*).
Therefore, SDK will forward to you a form of the aforementioned Confirmation of Receipt either together with the order confirmation or together with the invoice. You are obliged to return the completed and signed Confirmation of Receipt or an equivalent document immediately upon receipt of the goods.
If you fail to meet this obligation, SDK can additionally claim and invoice an amount corresponding to the German VAT. In such case, this invoice does not entitle you to input VAT deduction.

III. Retention of Title

1. SDK reserves title to the goods delivered as security until all claims to which SDK is entitled under our present and future business relationship have been settled. Title shall extend to the new products created through the processing of goods under retention of title. In the event of the processing, blending or mixing of materials not belonging to SDK, SDK shall acquire co-ownership to the new product in the relationship of the invoiced value of our goods subject to retention of title to the value of the other materials used.
The exercise of our right of retention shall not require a rescission of contract if you are in default.

2. Receivables arising from the (re)sale of goods to your customers which are still the property or co-property of SDK shall be deemed, on the date of sale, to have been assigned by you in advance to SDK. The scope of the advance assignment shall be limited to the amount of the SDK claim. Until revocation by SDK, you are entitled, however, to collect the receivables in your own name and forward it to SDK.
3. Provided that the value of the security to which SDK is entitled exceeds the secured claims by more than 10%, such security shall be released accordingly upon your request.
4. If justified doubt as to your solvency arises prior to or during delivery/execution of work, SDK may demand adequate security to secure your payment obligations and refrain from rendering delivery or the execution of work until such securities security has been provided. Should you be unable to provide the requested security, SDK shall be entitled to rescind the contract.

IV. Export Controls, Foreign Trade Legislation, Customs Clearance of Exports and Supply Chain Security

1. Because numerous SDK products are subject to export controls and their delivery is subject to compliance with the applicable export control regulations, SDK shall not be responsible for any delays in delivery and/or for non-delivery caused by compliance with the relevant export controls laws. You undertake for your part to strictly comply with the respective export controls regulations when exporting the products.
2. Our deliveries and services as well as all connected technology, documentation or technical support can be subject to national or international Export Controls legislation. We are entitled to withdraw from the entire contract on short notice, should at the time of the delivery/service a license under applicable legal or administrative licensing obligation not be granted or a prohibition for the delivery/service exist. In the case of sale, resale or transfer of our delivery/service nationally or internationally, you have to ensure Compliance with respectively applicable national and international (Re-) Export Controls legislation.
3. Only in the case that we are exporter according to Foreign Trade Legislation, we will perform an application for customs clearance for exports. A representation of SDK for customs clearance by you or third parties is prohibited.
4. You arrange for the necessary organizational procedures and measures for the supply chain security to ensure meeting the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, C-TPAT), in particular with regard to physical protection, customer, personnel and IT security, packaging and transport. You protect our deliveries and services to you or designated third parties against unauthorized access and manipulation. Furthermore, you only employ trustworthy personnel for such deliveries and services and pass respective procedures and measures on to possible sub-contracted third parties.

5. You commit to reimburse any incurred losses and damages and indemnify us from all civil and administrative claims resulting from violations against above obligations.

V. Place of Performance and Passing of Risk

SDK reserves the right to decide which of its Group production plants will supply the material. Place of performance for the delivery of goods is the delivering plant. In the case of deliveries with installation work, this shall be the site on which the plant is constructed. Acceptance shall be deemed to have taken place if it has not been given by you within 7 work days after completion. This shall not apply if grounds preventing acceptance exist in SDK's sphere of responsibility.

VI. Default and Liability for Defects

1. Agreed delivery dates refer to the date on which the goods are sent or - as the case may be - for deliveries with installation, the date on which the work is completed. If a delivery period has been exceeded through negligence, you may assert your legal rights after having granted a reasonable time extension. Any claims for damages against SDK are limited, however, to the foreseeable scope of the damage.

Any liability is limited to the value of the contract, provided that SDK's product liability insurance does not compensate for any further damages.

2. The warranty period for claims for defects is limited to 12 months from the date on which the statutory warranty period begins, provided that SDK is not liable for intent or gross negligence or for personal injury and death. This limitation shall furthermore not apply if SDK delivers a product which has been used in accordance with its normal manner of use in buildings/structure and has caused the defectiveness of such buildings/structure.

If you claim the existence of a defect after the expiration of more than 6 months, you are obligated to prove that you have not already been aware of the defect for a longer period and that you have immediately ceased to use the respective product upon discovering the defect. If you have continued to use the products despite of you being aware of a defect for which SDK bears responsibility and if the defect becomes greater because of such use, you shall not be entitled to any further warranty rights.

3. Obvious defects must be notified in writing pursuant to Sec. 377, 381 para. 2 German Commercial Code (*Handelsgesetzbuch*), otherwise any warranty claims are excluded. The timely sending of the notice of defect shall suffice to comply with notice periods.
4. If a notice of defect has been falsely made, you shall be obligated to SDK to reimburse, upon billing, the expenses incurred by SDK for examining the defect and reviewing the notice of defect.

VII. Other Statutory Liability

1. SDK shall be liable under the statutory provisions for any personal injury for which SDK is responsible and for all actions based on intent or gross negligence. Further claims for damages – irrespective of the legal grounds thereof – including, but not limited to, claims for the breach of ancillary contractual obligations, shall be excluded to the extent this is permitted under law or if they have not been expressly conceded pursuant to these Terms and Conditions of Contract.
2. Excluded is the liability for damages not directly incurred to the product itself and which exceeds the scope of damage foreseeable by SDK. A liability for consequential damages, including, but not limited to, loss of production, stoppage of production, loss of profit and the loss of information and data is excluded.

VIII. Applicable Law and Venue

1. The contractual relationship between the parties shall be governed by the laws of the Federal Republic of Germany upon exclusion of the UN Convention on the International Sale of Goods. Incoterms in their most recent version as amended from time to time shall govern the interpretation of delivery clauses.
2. Venue shall be at the principal place of business of the selling entity. SDK is also entitled to initiate an action against you at the court having general jurisdiction over you.