

# General Terms and Conditions of Purchase ystral gmbh

Status January 2023

## 1. General Terms & Scope of Application

- a. All orders and other agreements are subject to the Terms and Conditions of Purchase stipulated by the Purchaser. They shall be deemed accepted by means of a written order confirmation or delivery. Deviating order confirmations, agreements or terms and conditions on the part of the Supplier require the express written consent of the Purchaser in order to be valid.
- b. If the Supplier's Terms and Conditions of Delivery contain provisions which do not conflict with the provisions of the Terms and Conditions of Purchase, they shall apply in addition to the contractual relationship.
- c. Acceptance of delivery and services does not constitute acceptance of terms and conditions of sale.
- d. Offers and cost estimates shall be made free of charge and without obligation. They shall be made in writing unless otherwise agreed.

## 2. Orders

- a. Orders shall be placed in writing, in text form or by means of electronic data exchange. Electronically generated order forms are valid without a signature.
- b. Verbal agreements and agreements made by telephone must be confirmed in writing to be valid.
- c. Each order shall be confirmed in writing by the Supplier, stating the order number of the Purchaser. If the confirmation is not made within 5 days of the order being issued, the Purchaser shall no longer be bound by the order. Drawings and other documents attached to the Purchaser's order shall become part of the contract by virtue of the order confirmation. The Purchaser's order number must be stated in all correspondence, in all invoices and in all shipping documents (waybills, forwarding orders, delivery notes, etc.).

## 3. Documents, Supplier Declarations, Certificates of Origin

- a. The Supplier shall provide the Purchaser with all necessary supplier's declarations, certificates of origin, proof of preference or other documents required for processing without being requested to do so.
- b. The Purchaser shall include all necessary test reports, certificates and other documents listed in the purchase order. The documents shall be enclosed with the delivery or sent by e-mail to [materialscertificates@ystral.de](mailto:materialscertificates@ystral.de) with exact reference to the ystral order and item number.

## 4. Date of Delivery & Delay

- a. The agreed delivery dates or delivery periods are binding. They shall only be deemed to have been met if the documents have also been delivered in full.
- b. As soon as the Supplier becomes aware that it will not be able to deliver on time, in whole or in part, it shall immediately notify the Purchaser thereof, stating the reasons and the expected duration of the delay.
- c. In the event of a delay in delivery, the Purchaser shall be entitled to demand 0.5% for each commenced week of delay, but not more than a total of 5% of the agreed purchase price. The contractual penalty may be claimed up to the final payment.
- d. The Supplier shall have the right to prove that a lesser or no damage has been caused by the delay.
- e. If the delay is due to the fact that the Purchaser has not provided the necessary documents and/or components in good time, the Supplier may only assert this if he has previously sent a written reminder.

## 5. Packaging

- a. All goods must be packaged in such a way that transport damage is avoided; the Supplier shall provide us with written and binding packaging instructions for this purpose.
- b. The Supplier shall bear the costs for the packaging. Shipping conditions that deviate from this are to be recorded in writing.
- c. If packaging is charged separately, the costs for this shall be listed separately in the offer and invoice. The calculation shall be made at cost price.
- d. Environmentally friendly packaging materials are to be given preference.

## 6. Provisions / Tools

- a. Tools or other means of production manufactured on behalf of the Purchaser and paid for by the Purchaser (hereinafter referred to as "tools") become the property of the Purchaser upon payment in full. The transfer of ownership shall be superseded if the Supplier obtains the tools on loan from the Purchaser. The Supplier shall store the tools owned by the Purchaser separately from other items not belonging to the Purchaser. The Purchaser's ownership shall be indicated on the tools themselves and in the business records. The tools shall be surrendered at any time upon request of the Purchaser. These tools may neither be used by the Supplier for their own purposes nor made accessible to third parties.
- b. The Supplier shall arrange for all necessary maintenance and inspection measures in good time and at its own expense. The Supplier shall report any malfunctions to the Purchaser without delay.
- c. Materials provided shall remain the property of the Purchaser. They shall be stored clearly separated from the Supplier's other materials and clearly marked as the property of the Purchaser. They may only be used for their intended purpose and must be returned to the Purchaser if they are not required for the order.
- d. The Supplier shall immediately inform the Purchaser in writing of any defects in the materials provided at the time of handover to the Purchaser. The Supplier shall bear the risk of accidental deterioration and accidental loss as long as the materials provided are in their possession.

- e. After processing the materials provided, the Purchaser shall acquire co-ownership in proportion to the value of the manufactured item.
- f. The Purchaser is obliged to insure the tools and materials provided at replacement value against fire, water and theft at his own expense.

**7. Transfer of Risk / Shipping**

- a. The shipping address depends on the respective provision in the order.
- b. If carriage paid delivery has been agreed, the shipments shall be made carriage paid. Freight charges shall not be presented to the Purchaser.
- c. The Supplier shall be liable to the Purchaser for ensuring that all deliveries subject to labelling requirements are properly labelled. The labelling shall also be included in the order confirmation and in all shipping documents.
- d. Each delivery shall be accompanied by a delivery note containing the Purchaser's exact order number, the goods tariff number, the country of origin, the quantity and the description of the goods. The Supplier shall be responsible for any delays caused by non-compliance with this provision.
- e. Invoices shall not be deemed to be delivery notes.
- f. The Purchaser shall be entitled to demand separately from the Supplier detailed advice of dispatch for each consignment, irrespective of the method of dispatch and of the issue of the invoice, at the latest on the day of dispatch of the goods.
- g. In all cases, the risk shall pass to the Purchaser upon acceptance.
- h. The time and place of acceptance shall be determined in accordance with the Purchaser's order. In the absence of a separate agreement, acceptance shall take place immediately after arrival of the delivery at the agreed destination.
- i. The Purchaser shall be entitled to specify the mode of dispatch and the carrier. Otherwise, the Supplier shall be obliged to choose the mode of dispatch which is most convenient for the Purchaser and which is appropriate for the goods.

**8. Force Majeure**

- a. Impediments to performance shall release the Purchaser from its obligations to perform for the duration of the impediment and the extent of its effect. (Acceptance). Impediments to performance are strikes and lockouts, force majeure, riots, pandemics, acts of war or terrorism, governmental measures and other unforeseeable, unavoidable and serious events.

**9. Inspection of Goods / Liability for Defects**

- a. The Supplier shall carry out a complete outgoing goods inspection. If the Supplier manufactures the products, there will also be inspections during production. The Purchaser's incoming goods inspection shall be limited to obvious defects, externally visible transport and packaging damage as well as identity and quantity on the basis of the comparison between the Supplier's delivery documents and the order details. There shall be no further obligation to inspect. The Purchaser shall notify the Supplier immediately of any defects discovered in the course of such inspection. In this respect, the Supplier waives the objection of late notification of defects.
- b. If acceptance has been agreed or is stipulated by law, no additional incoming goods inspection shall take place in addition to the final acceptance at the Purchaser's premises.
- c. The Purchaser may, at its discretion, demand remedy of the defect or a new delivery. The Supplier may only refuse the type of remedy chosen by the Purchaser if this is associated with disproportionate costs. All expenses necessary for the subsequent remedy, in particular transport, travel, labour and material costs as well as costs for a goods inspection exceeding the usual scope, shall be borne by the Supplier.
- d. Following the lapse of a reasonable grace period or - if it is no longer possible to set a grace period due to particular urgency - after informing the Supplier, the Purchaser shall be entitled to remedy the defect itself, to have it remedied by a third party or to procure a replacement elsewhere. The Supplier shall bear the costs incurred in this respect, unless it is not responsible for the defect.
- e. If partial deliveries are defective, the Purchaser shall be entitled to withdraw from the contract as a whole after unsuccessful remedy, insofar as the remaining part is no longer of any interest to the Purchaser.
- f. The Supplier shall bear all expenses for the purpose of remedy or replacement deliveries to the respective place of use of the goods. The Purchaser shall inform the Supplier of the place of use upon request.
- g. The period of limitation for claims for defects is 36 months. The statutory limitation periods shall apply to buildings and building materials. The period begins with the transfer of risk.
- h. In the case of quality and durability guarantees, the limitation period shall be governed by §§ 195,199 BGB (German Civil Code) and shall be 36 months beginning with the end of the year in which the claim arose.
- i. If the Supplier remedies or replaces delivery items, the limitation period with regard to this defect in these parts shall begin to run again, unless it was a matter of an insignificant remedy or an express act of goodwill on the part of the Supplier.
- j. In all other respects, the statutory provisions shall additionally apply.

**10. Warranty & Product Liability**

- a. The Supplier assumes warranty for its deliveries for a period of one year after commissioning or use, in the case of machines for a period of 3,000 operating hours, and, if applicable, also after remedying of defects which have been reported, even if not reported in good time, such that the delivery item does not have any defects impairing use or operation and possesses the properties required under the contract and/or those warranted by the Supplier.
- b. The provisions on warranty shall also apply in particular to the stated performance and consumption figures and shall also extend to the goods purchased by the Supplier from its sub-suppliers.

- c. If this provision is not observed, the order shall be deemed not to have been properly fulfilled. We reserve the right to claim damages for any resulting consequences.
- d. If the delivery item is defective or becomes defective during the warranty period or if the absence of a warranted characteristic becomes apparent, the Purchaser may, at its discretion, demand that the defect be remedied within a reasonable period of time, that a replacement free of defects be delivered or that the purchase price be reduced.
- e. The Supplier shall reimburse the Purchaser for any costs incurred by the Purchaser due to defective delivery. If the Supplier allows a reasonable period of grace granted to it to lapse without having provided a replacement or remedied the defect, the Purchaser may remedy the defects itself or commission a third party to do so at the Supplier's expense. The Purchaser shall be entitled to offset the costs necessary to remedy the defect.
- f. The Supplier shall be liable for replacement deliveries and repair work to the same extent as for the original delivery item. The warranty period shall start anew for replacement deliveries.
- g. The obligation to examine the goods and to give notice of obvious defects shall in all cases, even if the delivery has previously become the property of the Purchaser or has been handed over to the forwarder, carrier or other agent of the Purchaser, only commence when the goods have been received at the Purchaser's premises and proper notice of dispatch has been given. A complaint period of two months shall run from this point in time. For all other defects, in particular those which only become apparent during the use or commissioning of the delivery item, immediate notification of defects within the warranty period shall apply.
- h. The supplier shall not be liable for defects and damage to items caused by
  - i. normal wear and tear of individual parts;
  - ii. wilful or negligent damage, faulty or negligent handling or excessive demands in the Purchaser's operations;
  - iii. storage, if dispatch, installation or commissioning is delayed for reasons for which the Purchaser is responsible.

**11. Delivery Obligation for Spare Parts**

- a. The Supplier shall be obliged to supply delivered goods, which become part of our products for at least twelve years after the discontinuation of the fabrication of the product concerned as spare parts at reasonable market prices.

**12. Prices and Terms of Payment**

- a. Unless otherwise agreed, invoices shall be sent to the Purchaser in duplicate separately for each order by post or the aforementioned permissible electronic data transfer to [invoice@ystral.de](mailto:invoice@ystral.de). They must not be enclosed with the consignments.
- b. Invoices must contain the order and item number specified by the Purchaser. The Supplier shall be responsible for all consequences arising from non-compliance with this obligation.
- c. Payment periods shall run from the date of receipt of the invoice. If the ordered item or the documents belonging to the order are only received after the invoice, this receipt shall set the payment period in motion.
- d. The Supplier may only assign the purchase price claim with the prior consent of the Purchaser. The Purchaser is obliged not to refuse consent without good cause.
- e. Payment shall be made at our discretion within 14 days of receipt of the invoice with a discount of 3 % or within 30 days without discount, without affecting our right to complain at a later date. In the event of early receipt of the delivered goods, the payment period shall commence from the date of delivery in accordance with the order or from the date of receipt of the invoice, whichever is the later. In the case of contracts for work and services or contractually agreed acceptance, the payment period shall not commence before acceptance.
- f. The statutory value added tax shall be shown separately.

**13. Rights to Documents and Models**

- a. The Purchaser retains the property rights and copyrights to all technical drawings and other documents which the Purchaser makes available to the Supplier.
- b. The Supplier shall be liable for ensuring that patents or other industrial property rights of third parties are not infringed by the delivery, use and operation of the goods tendered or ordered. The Supplier undertakes to indemnify the Purchaser against all possible claims which may be asserted against it by third parties on account of infringements of such industrial property rights.
- c. All information, drawings, documents, aids etc. provided to the Supplier for the creation of a delivered good may not be used for other purposes, reproduced or made accessible to third parties. The same applies to drawings or other aids which the Supplier produces according to the Purchaser's specifications. The Supplier shall regard the order and the work relating thereto as trade secrets and shall treat them confidentially. The Supplier shall be liable for all damages incurred by the Purchaser as a result of the infringement of the Purchaser's property and industrial property rights. All drawings, documents, aids etc. made available to the Supplier shall be handed over to the Purchaser on request without delay, together with all copies and/or duplicates.
- d. Documents as well as objects of any kind, such as samples, drawings, tools, models, etc., which the Purchaser makes available to the Supplier shall be returned to the Purchaser free of charge as soon as they are no longer required for the execution of the order, without being requested to do so, or shall be disposed of after consultation with the Purchaser in accordance with the DSGVO. Such documents may neither be used by the Supplier for its own purposes nor made accessible to third parties.

**14. Secrecy**

- a. Any use of the business relationship existing with the Purchaser for advertising purposes shall only be permitted with the Purchaser's consent.

- b. Unless a more extensive non-disclosure agreement is concluded, the Supplier shall at a minimum be obliged to keep secret from third parties all details of the orders, such as quantities, technical design, conditions, etc., as well as all other information requiring confidentiality, in particular the documents which it has knowingly or incidentally received from the Purchaser, and to use them only for the purpose of fulfilling the order.

**15. Data Protection**

The Supplier undertakes to comply with the relevant provisions of the EU Data Protection Regulation (DSGVO) within the scope of the legal relationship with ystral gmbh as the responsible party or processor. The Supplier undertakes to collect, process, disclose and make available personal data exclusively for the purpose of fulfilling the contractual relations with ystral gmbh and to store such data only for the purpose of fulfilling the statutory retention obligations. Processing of the data for self interests or for the interests of third parties is not permitted. Any disclosure of personal data to third parties requires the prior written consent of ystral gmbh. If the Supplier processes personal data of ystral gmbh within the scope of a contractual relationship, the Supplier shall conclude a corresponding order processing agreement with ystral gmbh pursuant to Art. 28 DSGVO. The Supplier shall ensure the technical and organisational measures required to maintain the confidentiality [etc.] of the personal data in accordance with the DSGVO. Within the scope of the legal relationship with ystral gmbh, the Supplier undertakes to employ only persons who are trained in data protection and who are obliged, during and after the termination of their activities [by entering into a non-disclosure agreement], not to collect, process or use personal data without authorisation. Upon request, the Supplier shall provide ystral gmbh with all necessary information regarding data protection and, if applicable, provide evidence of a data protection concept.

**16. Place of Fulfilment / Place of Jurisdiction / Applicable Law**

- a. The place of fulfilment for all payments is Ballrechten-Dottingen, the place of fulfilment for all deliveries and services is the destination specified in the order.
- b. The place of jurisdiction is the court responsible for the Purchaser's place of business. However, the Purchaser shall also be entitled to bring an action before the court with jurisdiction for the Supplier's place of business.
- c. The law of the Federal Republic of Germany shall apply subject to the exclusion of international unified law, in particular the CISG or UN Convention on Contracts for the International Sale of Goods.

**17. Minimum Wage**

- a. The Supplier guarantees the Purchaser to comply with the provisions of the German Minimum Wage Act (MiLoG) with respect to its own employees.
- b. The aforementioned obligation of the Supplier to comply with the provisions of the MiLoG as amended from time to time shall also extend to the personnel employed by its subcontractors and again by their subcontractors.
- c. The Supplier hereby assumes full guarantee for compliance with the obligations arising from the MiLoG.
- d. The Supplier shall indemnify the Purchaser against all claims by third parties and liabilities to third parties incurred by the Purchaser as a result of a breach of the aforementioned statutory provisions on the part of the Supplier or a subcontractor engaged by the Supplier or their supplier.

**18. Conflict Minerals**

- a. The Supplier shall ensure that it does not supply the Purchaser with any products containing conflict minerals from the Democratic Republic of Congo and its neighbouring states Angola, Burundi, Central African Republic, Republic of Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia, the so-called Covered Countries or CRD-Countries.
- b. The Supplier shall check whether it processes so-called conflict minerals within the meaning of the US Dodd-Frank Act in its products. In this case, the Supplier shall inform the Purchaser without being requested to do so and shall provide further information upon request.

**19. Export control, origin of goods and conflict-free procurement - Supply Chain Act (due diligence)**

- a. The Supplier is obliged to observe the relevant statutory and official regulations and requirements when fulfilling the contract.
- b. The Supplier is obliged to indicate the commercial origin as well as the customs tariff number (HS-/KN-Code) when fulfilling the contract.
- c. The Supplier shall in particular be liable for ensuring that no embargo provisions of the UN Security Council, the European Commission or national legislators are violated or disregarded through delivery of the delivered goods. The Supplier is exclusively responsible for the proper export of all delivered goods from the country of dispatch and undertakes in particular to obtain all permits required in foreign trade.
- d. The Supplier is obliged to inform the Purchaser in writing as early as possible before the delivery date of any licensing requirements for its goods under the applicable German, European (EU) or US export, customs and foreign trade law as well as under the export, customs and foreign trade law of the country of origin of its goods. For this purpose, the Supplier shall provide the following information and data:
  - a. the export list number pursuant to Annex AL to the German Foreign Trade and Payments Regulation or comparable list items of relevant export lists
  - b. the list item in accordance with Annex I to the European Dual-Use Regulation
  - c. the Export Control Classification Number (ECCN) according to the U.S. Commerce Control List (CCL), if the goods are subject to the U.S. Export Administration Regulations (EAR)
  - d. the list item of the United States Munitions List (USML), if the goods are subject to the International Traffic in Arms Regulations (ITAR)
- e. The delivered goods must fulfil the conditions of origin of the preferential agreements of the EU, unless expressly stated otherwise in the order confirmation.

- f. The Supplier shall ensure that the Goods supplied comply with the OECD Due Diligence Guidance for Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and comply with applicable due diligence obligations and provisions, such as in particular under Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum, tungsten, their ores and gold from conflict-affected and high-risk areas, as well as under the future Supply Chain Act.
- g. The Supplier grants the Purchaser the right at any time to audit the Supplier's or the relevant upstream suppliers' production facilities and to verify the Supplier's compliance with the Purchaser's Responsible Supply Chain Management System.

**20. REACH / ROHS**

- a. The Supplier guarantees that it complies with the requirements of the EU Chemicals Regulation REACH (Regulation (EC) No. 1907/2006 of 30.12.2006) as amended - hereinafter referred to as the REACH Regulation – and that the substances have been registered. We are not obliged to obtain authorisation under the REACH Regulation for any goods supplied by the Supplier. The Supplier further guarantees that it will not supply any products containing substances pursuant to:
  - Annex 1 to 9 of the REACH Regulation as amended from time to time,
  - the Council Decision 2006/507/EC (Stockholm Convention on Persistent Organic Pollutants as amended from time to time),
  - the EC Regulation 1005/2009 on Ozone Depleting Substances as amended, the Global Automotive Declarable Substance List (GADSL) as amended (at [www.gadsl.org](http://www.gadsl.org)), RoHS (2002/95/EC) for products according to its scope of application.
- b. If the delivered goods contain substances which are listed on the so-called "Candidate List of Substances of very High Concern" ("SVHC list") according to REACH, the Supplier is obliged to notify this immediately. This also applies if substances not previously listed are added to this list in the case of existing deliveries.  
The current list can be viewed at [http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp)  
Furthermore, the products must not contain any asbestos, biocides or radioactive material.
- c. If these substances are contained in the products delivered to us, we must be notified in writing prior to delivery, stating the substance and the identification number (e.g. CAS) and a current safety data sheet of the product to be delivered. The delivery of these products requires a separate release from us.  
The Supplier is obliged to indemnify us against any liability in connection with the Supplier's non-compliance with the above-mentioned regulations or to compensate us for damages incurred by us as a result of or in connection with the Supplier's non-compliance with the regulations.

**21. INCOTERMS**

- a. INCOTERMS® 2020 shall apply as specified in the Purchase Order. Unless otherwise agreed in the Purchase Order, the INCOTERMS® 2020 shall apply in accordance with the rules of the clause DDP with the destination provided for in clause 4.1.

**22. Severability Clause**

If any provision of these Terms and Conditions of Purchase is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a provision which comes as close as possible to the legal and economic purpose of that provision.