

General Conditions of Sale – as of 07/2007

SPÄH group of companies



(after also referred to as “SPÄH” or “the company”)

Headquarter:

Karl Späh GmbH & Co. KG
Industriestrasse 4-12
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Subsidiaries:

Karl Popp GmbH & Co. KG, Eppenser Weg 9, D-29549 Bad Bevensen / GERMANY
QUADRIGA Dichtungs-GmbH, Gutenbergring 47, D-22848 Norderstedt / GERMANY
SCHIPPL-Dichtungen GmbH, Haldenloh 2, D-86465 Welden / GERMANY

Preamble

The following General Conditions of Sale are applicable to all – including future – contracts and other services of SPÄH. Terms of the purchaser which deviate from those of SPÄH are not binding for SPÄH unless expressly confirmed in writing by SPÄH.

1. Offer

1. Our offers are subject to confirmation. Agreements, in particular verbal ancillary agreements and assurances expressed by our sales staff will become binding only following our confirmation in writing.
2. If the order confirmation deviates from the order, the purchaser must object in writing within one week of receipt, otherwise the contents of our confirmation of order apply.
3. Documents such as drawings, illustrations, technical data, references to standards and information contained in publicity material which are part of the offer are not warranties of characteristic properties unless they are expressly indicated by us in writing as such.
4. Deviations of the product / article supplied from offers, patterns and samples and preliminary consignments are permissible in line with the DIN / EN standards in force or other relevant technical standards.
5. Our offers are only valid for the time period specified.

2. Conclusion of contract

1. The contract is concluded on written confirmation of order by SPÄH or on delivery of the goods.
2. Agreements, in particular verbal ancillary agreements and assurances expressed by our sales staff will become binding only following our confirmation in writing.

3. Prices

1. Prices are deemed to be fixed only on written confirmation of order by SPÄH and with the reservation that the order details on which the order confirmation is based remain unchanged. Unless agreed or stated otherwise, our prices are ex-works excluding packaging in EUROS plus the statutory VAT rate valid at the time of delivery.
2. Packaging, postal charges, insurance and other shipping costs are not included and will be invoiced additionally.
3. Within the framework of the statutory regulations, we will take back packaging supplied by us if it is returned by the purchaser carriage paid within an appropriate period.

4. Delivery amounts, delivery dates

1. For production reasons, excess deliveries or shortfalls of up to 10% of the quantity contracted shall be permissible.
2. SPÄH shall be entitled to make partial deliveries to an acceptable extent.
3. The delivery dates stated by SPÄH refer to the dispatch date of the goods. They are deemed to be observed if the goods leave the works on this date or the purchaser is informed of readiness to deliver.
4. The agreed delivery date applies always after clarification of all technical and commercial details. In this respect, they are generally unconfirmed delivery dates. They are only binding delivery dates if they have been confirmed in writing to the purchaser as such.
5. If any actions of the purchaser are required for the production of the goods or for effecting delivery, the delivery periods begin with the complete execution of these actions by the purchaser. Such actions are, for example, the provision of all documents required for execution of the order, where applicable the provision of faultless material in good time and free of charge according to agreed specifications with an appropriate quantity surcharge for possible waste (but at least 5%) and effecting of the agreed down-payments by the purchaser.
6. If delivery dates are exceeded, the purchaser is to grant a reasonable extension of not less than three weeks.
7. The delivery periods will be appropriately extended in the case of measures connected with force majeure, operational stoppages and similar unforeseen circumstances which are outside the company's control, insofar as such obstacles can be shown to have considerable effect on the manufacture or delivery of the products to be supplied.
This shall also apply if such circumstances arise with upstream suppliers. In these cases, the purchaser in particular is not entitled to withdraw from the contract and/or claim damages.

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8. If the delivery date including the reasonable extension is not observed, SPÄH is only liable for the invoice value of the quantity of goods not delivered on time, to a maximum of the amount of negative interest. If SPÄH is in arrears with delivery, the purchaser shall be able to withdraw from the contract at the end of an appropriate additional period granted to us, insofar as the goods have not been despatched by the end of the period. Claims for damages resulting from delays and non-fulfilment shall be in line with point 6 of these provisions, “Breaches of obligations”.
9. The risk shall pass to the purchaser on handing over of the goods to a shipping agent or carrier although no later than on their leaving the warehouse or – in the case of drop shipments – the supplier’s works, even in the case of consignments delivered carriage free or franco domicile. The obligations and costs of unloading shall be borne by the purchaser. SPÄH shall take out insurance only at the purchaser’s instructions and expense.
10. In the case of call-off orders, SPÄH shall be entitled to manufacture the entire quantity ordered in one batch. Any changes required can no longer be taken into account after the order has been placed, unless this has been expressly agreed. The call-off dates and quantities can be complied with only to the extent of our delivery and manufacturing capacities, unless firm agreements have been reached. Should the goods not be called off in line with the contract, we shall be entitled to invoice for them as having been delivered after an appropriate additional period has passed.

5. Warranty

1. For newly produced parts the warranty period is 24 months from date of delivery. For self-adhesive parts the warranty period is 12 months from date of delivery. These warranty periods apply if no other agreements have been made.
2. The purchaser is to check the goods for perfect condition immediately after delivery. Obvious defects are to be reported to SPÄH in writing immediately, at the latest 2 weeks after receipt of the goods. If obvious defects are not reported, not reported in time or not correctly reported, the warranty does not apply in this respect.
3. Other defects are to be reported to the company within one week of detection but at the latest 6 months after receipt of the goods.
4. The company is entitled to repair or replace faulty goods at its own discretion. This means that SPÄH decides whether faults are to be repaired or new deliveries are to be made, under appropriate consideration of the interests of the purchaser.
5. If the attempt to repair or replace goods fails, the company is entitled to repeat the attempt. In this case the company decides again whether to replace or repair defective goods.
6. The purchaser is only entitled to withdraw from the contract and/or assert claims for compensation if the attempt to repair or replace goods has failed a second time. Claims for compensation are only valid in the case of gross negligence or intent on the part of SPÄH. Compensation is always restricted to the negative interest. Compensation for consequential damage is excluded in as far as it is not the result of intent.

6. Breaches of obligation

1. SPÄH is only liable for breaches of contractual and non-contractual obligations, in particular for unfeasibility, delay, faults on conclusion of the contract and allowed action – also for executives and other vicarious agents – in cases of intent and gross negligence, restricted to the contractually typical damage foreseeable on conclusion of the contract. Direct claims against these persons are excluded in all cases.
2. This exclusion does not apply in cases of culpable breaches of important contractual obligations in as far as the achievement of the contractual purpose is jeopardised, in the absence of assured attributes and in cases of binding liability according to product liability law. Regulations concerning burden of proof are not affected.
3. SPÄH is not generally liable for breaches of obligation which result from work performed according to the drawings, documents or samples checked by the purchaser and released by him as production documents. The company is not responsible for the design and correctness of the reproduced documents.
4. However, the company is obliged to inform the purchaser without delay of the infeasibility of the technical implementation of the documents in as far as this can be ascertained.
5. In particular, liability for the infringement of industrial property rights in the performance of work according to the purchaser’s specifications is excluded. There is no duty of inspection on the part of the company with regard to industrial property rights of third parties.

7. Payment conditions

1. Unless otherwise agreed, our invoices are payable within 14 days with a discount of 2%, within 30 days net, from the date of invoice in each case. Invoices for net amounts of less than EUR 50.00 and those for installation work, wage labour, repairs, moulds and shares of the cost of tools are due immediately and are payable net in each case. Payment must be effected within the above-mentioned periods in such a way that the amount required for settlement of the invoice is available to us no later than the due date.
2. Counterclaims which are contested by us or have not been recognised by legal force do not give the purchaser the right to withhold or offset the amount due.
3. If the term of payment is exceeded, and following a reminder at the latest, the company is entitled to charge interest at a rate of 10%. We reserve the right to assert further claims for damage caused by further delay.
4. Bills of exchange are not accepted. Cheques are only accepted for the sake of performance and with the reservation that the amount is credited.
5. If the purchaser is in arrears with payment, SPÄH is entitled to refuse further fulfilment of the contract.
6. If claims for payment are considerably jeopardised, the company is entitled to withdraw from the contract and assert claims for compensation.
7. If the purchaser refuses to make pre-payments or provide securities, the company is entitled to withdraw from the contract and assert claims for compensation.
8. Irrespective of a contrary stipulation of the purchaser, payments received redeem first costs, then interest and last the principal claim. In the case of more than one claim, the oldest is redeemed first.

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8. Reservation of title

1. All goods supplied remain the property of SPÄH (conditional commodity) until all claims resulting from the business connection have been fulfilled, irrespective of the legal reason, including claims arising in the future or contingent claims.
2. In the event of processing, combining and mixing of the conditional commodity with other products by the purchaser, SPÄH shall be entitled to (co-)ownership in the resulting product to the value of the state of the conditional commodity before processing, combining or mixing.
3. The purchaser shall be entitled to sell the conditional commodity only within the normal course of business subject to his standard business terms and for as long as it is not in arrears. If the purchaser resells the conditional commodity, he shall cede the claim vis-à-vis the acquiror to the company at the time of resale. They serve as sureties to the same extent as the conditional commodity. The purchaser is to oblige the acquiror to make payment directly to the customer with regard to the obligation of payment resulting from the resale. Exceptions to this must be previously agreed in writing between the company and the purchaser.
4. All other dispositions regarding the conditional commodity are not permitted, in particular assignments by way of security or mortgage
5. If foreclosure is made on the assets of the purchaser and this involves the conditional commodity, the company is to be informed immediately in writing, including all required data (enforcement office, file number), if applicable including enforcement reports.
6. Articles supplied by the company to the purchaser which are not part of the scope of performance as such (e.g. drafts, design drawings, tools etc.) remain the property of the company.

9. Copyrights

1. We retain the right of ownership and copyright in respect of cost estimates, drafts, drawings and other documents; they may be made accessible to third parties only with our consent. Drawings and other documents relating to offers must be returned on request.
2. Insofar as we have supplied articles based on drawings, models, samples or other documents handed over by the purchaser, the purchaser assumes liability to ensure that the protected rights of third parties are not infringed. Should third parties forbid us – on the basis of protected rights – in particular to produce and deliver such articles we shall be entitled – without being obliged to examine the legal situation – to stop all further activities in this respect and to ask for damages if the purchaser is at fault. In addition, the purchaser undertakes to indemnify us immediately in respect of third party claims connected therewith.

10. Trial components, moulds, tools and other production equipment

1. The manufacture of trial components will be borne by the purchaser.
2. For forms, tools and other devices required for manufacture, the purchaser will only be invoiced for a part of the total costs. The right of ownership remains with SPÄH. If the purchaser insists on sole ownership, the part already invoiced will be invoiced again.
3. If moulds, tools and other devices required for manufacture become useless before the agreed output quantity has been reached, the costs incurred for the replacement will be borne by SPÄH.
4. In respect of moulds, tools and other manufacturing devices made available by the purchaser, our liability will be restricted to the care given to the company's property. The costs of maintenance and servicing will be borne by the purchaser.
5. Our obligation to keep the articles concerned – irrespective of the purchaser's ownership rights – will terminate no later than 2 years from the last date of manufacture using the mould or other tools.

11. Additional conditions for wage labour

1. Parts are delivered free of costs for SPÄH.
2. Packaging is invoiced at cost where applicable but not taken back.
3. If execution of work is delayed through no fault of the company, the prices can be adjusted in accordance with the change in costs in the period of the delay.

12. Place of performance, jurisdiction and law applicable

The place of performance and jurisdiction is the relevant registered seat of the branch of the company of the SPÄH group of companies.

13. Final provisions

1. If any provision of this contract should be invalid, all other provisions of this agreement shall continue in effect. The invalid provision is to be replaced by a valid one which most closely corresponds to the economic purpose of the provision which it replaces.
2. All declarations which affect the validity of the contractual relationship must be made in writing. An alteration of the requirement for the written form must in turn be made in writing.