

# General Terms and Conditions of Sale of SMB International GmbH



## § 1 General/Scope of validity

- (1) The following terms and conditions of sale apply exclusively for all deliveries and services, also including those resulting from future business transactions. Contradictory terms and conditions of the customer (hereinafter Customer) or terms and conditions of the Customer which deviate from our terms and conditions of sale will not be recognised by us unless we have explicitly consented to their validity in writing. Our terms and conditions of sale will also apply if we render delivery to the Customer without reservation although we have knowledge of contradictory terms and conditions of the Customer or terms and conditions of the Customer which deviate from our terms and conditions of sale.
- (2) All agreements made between us and the Customer are recorded in writing in this contract. The written form is also indispensable for supplements and amendments.
- (3) Our general terms and conditions of sale only apply to entrepreneurs as defined by Art. 310 Para 1 BGB (German Civil Code).
- (4) Transactions agreed by our field sales staff must be confirmed by us in writing to be valid.

## § 2 Offer - Prices

- (1) Our offers are always subject to confirmation. Any transaction will only come into effect after we have issued a written order confirmation.
- (2) All prices are valid only for the corresponding firmly agreed deliveries; they are not binding for repeat orders or extensions.
- (3) Insofar as nothing has been agreed in a specific case, all prices are ex our works or distribution warehouse. The purchaser will bear the costs for transport as well as taxes, fees, duties and other costs. In the case of deliveries abroad the Customer will also bear all other costs relating to shipment abroad; he will bear sole liability for the duties to which the goods are subject until they have been definitively cleared by customs.
- (4) Should, following conclusion of the contract, additional costs be incurred in connection with the goods to be delivered by us which could not be foreseen at the time the contract was concluded, such as newly introduced or increased customs duties, freight, taxes or other duties, then we will be entitled to increase the agreed price up to the sum of these costs at most. The same will also apply if, during the course of performance of the contract, the international monetary value of the euro changes, insofar as a specific value for the euro in relation to another currency was agreed at the time the contract was agreed. Insofar as circumstances resulting in ordered goods becoming more expensive as described above should occur, then we will be obliged to inform the Customer of this without delay. The Customer may withdraw from the contract within 2 weeks of receiving the notification. He will, in such cases, not be entitled to any claim for damages.
- (5) Insofar as free shipping has been agreed, then in the case of express freight, express parcel service, etc. the purchaser will bear the difference between the usual freight or postage costs and the actual costs incurred.
- (6) We will only take out transport insurance at the Customer's explicit written wish. The Customer will bear the full costs of such insurance.

## § 3 Deliveries - Deadlines

- (1) Delivery deadlines are only binding if both parties have mutually confirmed the corresponding deadline in advance in writing.
- (2) Compliance with our delivery obligation assumes the purchaser's timely, orderly performance of his obligations. The plea of non-performance of the contract remains reserved. Should the Customer be in default of acceptance or should he culpably breach other obligations to cooperate, then we will be entitled to compensation for the damages we incur, including any additional expenses.
- (3) In the case of partial deliveries the individual shipments must be called up in such good time that it is possible for us to comply with any delivery deadlines which may have been agreed. We are entitled to manufacture the entire order quantity immediately, also where phased or partial deliveries have been agreed. In such cases, it will no longer be possible to carry out any desired alterations after the order has been confirmed.
- (4) We will be liable in accordance with statutory provisions insofar as the purchase contract on which liability is based is a fixed date transaction as defined by Sect. 286 Para. 2 (4) BGB or by Sect. 376 HGB (German Commercial Code). We will also be liable in accordance with statutory provisions insofar as the purchaser is, as a result of a delivery delay for which we are responsible, entitled to assert a claim based on the argument that his interest in further performance of the contract has ceased to exist (expired). We will, furthermore, be liable in accordance with statutory provisions insofar as the delivery delay is due to an intentional or grossly negligent breach of contract for which we are responsible or due to a culpable breach of a material contractual obligation. We will be held responsible for any fault of our representatives or third-party vicarious agents. Insofar as the delivery delay is not due to an intentional breach of contract for which we are responsible, then our liability for damages will be limited to the typically occurring damages which could be foreseen at the time the contract was concluded. If agreed separately, we will only be liable for a maximum of 0.5 % of the shipment or order value for each full week of delay and at most for 5 % of the shipment value. For the rest our liability resulting from delay is excluded.
- (5) We are obliged to supply goods solely from our own manufacturing facilities plus any additional purchases and services which have been agreed in writing.
- (6) In the event of exceptional circumstances in Germany or abroad which are outside our sphere of influence; unforeseeable for us despite the requisite care and, taking our other delivery obligations into account, make it impossible to carry out contractually compliant delivery or only under economically unreasonable conditions, we may, for the duration of the obstruction, restrict or discontinue the delivery or, in the case of a longer obstruction, withdraw from the contract or terminate it without notice. An exceptional circumstance is, for example, war or war-like conditions and their repercussions; pandemics; unrest; malfunctions for which we are not responsible; industrial action; restrictive measures imposed by the authorities or by law and the obstruction or delay of transport. Should circumstances as described above result in a significant increase in manufacturing, procurement or distribution costs, then we may, even if a fixed price has been agreed, increase the price at most by the sum of the additional costs by making an announcement. Sect. 2 (4) will apply correspondingly.
- (7) In the case of special installations, additional or lower costs of up to 15 % are possible.

## § 4 Acceptance and default of acceptance

- (1) The Customer will also be deemed to be in default of acceptance of the goods if we offer him shipment in writing and he refuses acceptance.
- (2) Insofar as we can claim damages due to default in the event of non-acceptance, we will be entitled to calculate the specific sum of the damages. The purchaser will be entitled to prove that the damages incurred were lower.

## § 5 Intra-community deliveries

- (1) In the event of any intra-community delivery, carriage, dispatch or collection as well as in the case of any tax-free services, the Customer assures that he is an entrepreneur. He or his representative will thus be obliged to provide and make known to us all required documents for the provision of ledger and documentary proof of carrying out of an intra-community delivery, carriage, dispatch or collection.
- (2) This includes in particular:  
The VAT identification number; the Customer's assurance regarding use within the scope of his foreign enterprise including confirmation of receipt by the Customer or his representative; information on the place of destination in the rest of the Community (arrival confirmation) and information on the Customer's branch of industry or profession.
- (3) Should the Customer not perform these procurement obligations of his own free will, then he will be liable for the full extent of the consequences arising from this. The purchaser must, in particular, pay to us the value added tax, interest or late payment fines which are retrospectively due as well as reimburse us for the additional expenses which have been incurred.
- (4) We will, if so demanded by the Customer, only be obliged to use our means of appeal if, in addition to paying the above-mentioned sums, the Customer also provides an appropriate advance payment for the appeal proceedings.

## § 6 Type of shipment - Transfer of risk

- (1) Unless otherwise agreed, the type of transport will be at our discretion.
- (2) The risk of accidental loss and accidental damage of the goods will be transferred to the purchaser as soon as the goods leave our works or distribution warehouse. Should, at the purchaser's request, we send the goods to a destination stated by him, then transportation risk will – also in the case of „freight paid“ – be transferred to the Customer upon handing over of the goods to the freight forwarder, carrier or other person or institution specified for shipment.
- (3) Should shipment / acceptance be delayed or fail to take place due to circumstances for which the supplier cannot be held responsible, then the risk will be transferred to the orderer on the date on which readiness for shipment / acceptance is notified. The supplier undertakes to take out any insurance which the Customer demands. The orderer will bear the costs of such insurance.

## § 7 Industrial property rights - Advice - Intellectual property

- (1) Insofar as we manufacture products or machines to the Customer's specifications, then the purchaser will warrant that manufacturing of this product does not infringe any third-party industrial property rights. The Customer is obliged to indemnify us against any liability to third parties / against any third-party claims which may arise in connection with the manufacturing or sale of the relevant products.
- (2) Technical information and/or advice will only be provided as a non-binding recommendation. Accordingly, we accept no guarantee or liability vis-à-vis the Customer. The Customer is responsible for independent verification, also with regard to the information contained in documentation provided to us, also regarding whether third-party industrial property rights exist.
- (3) Drafts; drawings; functional processes; manufacturing and assembly documentation; etc. are and will remain our intellectual property. All corresponding rights apply. Where such material is provided to the Customer, then it is entrusted to him in accordance with Sect. 18 German Unfair Competition Act (UWG). Any transfer of usage rights which goes beyond those which are required to perform the contract will require an explicit written agreement, independent of whether special protective rights exist or not.

## § 8 Claims for defects and defects of title

- (1) Claims for defects made by the Customer will assume that he has performed his examination and notification obligations as required by Sect. 377 HGB in an orderly manner. The Customer is obliged to examine the delivered goods or installation components thoroughly without delay after receipt. Irrespective of shorter complaint periods specified by the transporter, defects must be notified to us in writing at the latest 14 days after delivery of the goods; failure to do so will release us from liability.
- (2) The Customer will bear the full burden of proof for any and all eligibility criteria, in particular for the defect itself; for the time at which the defect was established and for the timeliness of notification of the defect.
- (3) In the case of any defects we will, at our own discretion, initially perform our warranty obligation by remedying the defect (rectification) or by supplying a defect-free object (replacement). Should supplementary performance by us be unsuccessful, then the purchaser may, as a matter of principle, request a price reduction or withdraw from the contract. Failure of supplementary performance must, in particular, be assumed if we have still not rectified the defect after three attempts at rectification. We will, at any time during the attempts at rectification, also be entitled to decide to supply a replacement. The purchaser will not have any right of withdrawal in the case of minor defects or minor deviations of characteristics.
- (4) Should the Customer decide to withdraw from the contract due to a defect of title or a material defect following a failed attempt at rectification, then he will also not be entitled to any claim to damages arising from the defect. Should the Customer decide on damages following a failed attempt at rectification, then the goods will remain on the Customer's premises if this can reasonably be expected of him.
- (5) We will be liable in accordance with statutory regulations insofar as the Customer asserts claims for damages which are based on intent or gross negligence, including the intent or gross negligence of our representatives or third-party vicarious agents. Insofar as we are not accused of any intentional breach of contract, then our liability for damages will be limited to 50 % of the net value.
- (6) Liability due to culpable injury to life, body or health will remain unaffected; the same applies to statutory liability under the provisions of the German Product Liability Act (Produkthaftungsgesetz).

- (7) Our liability will be excluded insofar as no other deviating provision is stated above.
- (8) The statute of limitations for claims for defects is 12 months.
- (9) In the event of rectification of a defect we will be obliged to bear all expenses incurred for the purpose of rectification of the defect, in particular transport, travel, work and material costs, insofar as these are not increased because the purchase object has been taken to a location which is not the place of performance or supply.
- (10) Should use of the object supplied result in a breach of industrial property rights or copyright rights in Germany, then the supplier will, as a matter of principle, obtain at his own cost the right for the Customer to continue to use the object or will, in a manner which is reasonable for the Customer, modify the object supplied in such a way that it no longer breaches the protective rights. Should this not be possible at economically reasonable conditions or within a reasonable period of time, then the Customer will be entitled to withdraw from the contract. The supplier will, under the above-mentioned conditions, also be entitled to withdraw from the contract. Over and above this, the supplier will indemnify the Customer against undisputed or legally established claims of the relevant holder of protective rights.
- (11) The obligations of the supplier stated in Sect. 8 (10) are, subject to Sect. 11 (1), final in the case of any breach of protective or copyright rights. They will only exist if
- The Customer informs the supplier without delay regarding the assertion of breaches of protective or copyright rights
  - The Customer supports the supplier in his defence against the claims which have been asserted to a reasonable extent respectively enables the supplier to carry out modification measures as per Sect. 8 (10),
  - The supplier is able to reserve all defensive measures including out-of-court settlements,
  - The defect of title is not due to instructions issued by the Customer, and
  - The defect of title has not been caused by the supplier altering the object supplied without authorisation or using it in a manner which is not in accordance with the contract.

## § 9 Limitations of liability and statute of limitations

- (1) In the case of slightly negligent breaches of obligation our liability will be limited to the foreseeable typical direct average damages according to the type of goods / service at the time the contract was concluded. This will also apply for slightly negligent breaches of obligation by our legal representatives, senior managers or vicarious agents. We will not be liable for slightly negligent breaches of immaterial contractual obligations.
- (2) Claims for damages on the part of the Customer resulting from a defect will expire one year after delivery of the goods or machines. This will not apply if our gross culpability can be proven. The statute of limitations provision will also apply to the personal liability of our employees, representatives and vicarious agents.
- (3) Our liability will be limited to 25% of the delivery value at most. Over and above this, only additional written agreements will be recognised.
- (4) Liability for production stoppages and loss of profits is excluded. This limitation of liability will not apply insofar as the supplier intentionally causes the damage. In deviation from the above-mentioned limitation of liability, the supplier will be liable for material damages insofar as damages are reimbursed by the insurer within the scope of the sums insured under, and the conditions of, the supplier's public liability insurance. Information on the sums insured can be provided on request.

## § 10 Payment

- (1) Insofar as no other terms of payment have been agreed, the purchase price will be payable immediately upon receipt of invoice without any further deductions. Payment will only be deemed to have been made punctually if the money is at our disposal in the stated bank account on the due date. Should payment not be made within the agreed or statutory period, then we will be entitled to demand default interest at the statutory rate. We will, in addition to this, be entitled to assert further claims for default damages, whereby the purchaser's right to prove that lower damages were incurred is reserved.
- (2) Cheques and bills of exchange will only be accepted in lieu of payment. Additional costs and expenses will be borne in full by the Customer.
- (3) In the event of a deterioration in the Customer's assets we will have the right to refuse performance. Following setting of a deadline we will have the right to only carry out performance on a quid pro quo basis against payment and/ or to demand an additional security from the Customer. Should the reasonable deadline expire without payment being made, then we may withdraw from the contract. A deterioration in the Customer's assets shall be deemed to have occurred in particular if orderly business operations are no longer possible. This will, in particular, be the case if
- a cheque or bill of exchange is unusable
  - assets of the Customer have been seized or other enforcement measures have been threatened or initiated,
  - payments are delayed or suspended,
  - a legal or out-of-court settlement,
  - insolvency proceedings against the Customer or
  - proceedings following an insolvency order are applied for
  - or similar circumstances exist which call the Customer's creditworthiness into question.
- The Customer will be obliged to inform us without delay, immediately and without request if one of these circumstances or a comparable event occurs. Goods which we have supplied and are still stored on the Customer's premises must be separated from other goods without delay and our property must be identified as such. All other statutory claims which arise from the default will remain unaffected.
- (4) The Customer will only be entitled to assert his right to offset counterclaims arising from other legal relationships insofar as these claims are undisputed and have been legally established.

## § 11 Retention of title

- (1) We reserve the right to retain ownership of the purchase object until final payment of all claims against the Customer, including any future claims, arising from mutual business relationships. Should the Customer behave in a manner which is contrary to the contract, in particular in the case of default of payment, then we will be entitled to take back the purchase object. This will also apply if an application is made to initiate insolvency proceedings against the purchaser's assets. Taking back of the purchase object by us will not represent any withdrawal from the contract unless we explicitly declare in writing that this is the case. Following taking back of the purchase object we will be authorised to exploit it; the proceeds of this exploitation will be offset against the purchaser's debts minus reasonable exploitation costs.
- (2) The Customer will be obliged to handle the purchase object with care; he will, in particular, be obliged to insure it against fire and water damage and theft for a sufficient sum corresponding to its original value. The Customer herewith assigns any claims arising from a case of damage, in particular against the insurer, to us to secure our claims to the amount of our accounts receivable. We accept this assignment.
- (3) The Customer must inform us in writing without delay regarding any seizures or other action by third parties and hand over to us all documents required for an intervention so that we can file a suit as per Sect. 771 German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs incurred for a suit/ reacquisition of the goods, then the Customer will be liable to us for the incurred loss.
- (4) The Customer will be entitled to sell on the purchase object within the course of proper business, however not to pledge it or to assign it as security. The Customer here with assigns to us all claims against his customers or third parties to which he is entitled from selling on, independent of whether the purchase object is sold with or without further processing, to the sum of the final invoice amount (including VAT) of our accounts receivable. We accept this assignment. The Customer will remain authorised to collect this account receivable even after this assignment. Our power to collect the account receivable ourselves will remain unaffected by this. We will, however, undertake not to collect the account receivable as long as the Customer meets his payment obligation from the proceeds he receives from the sale; does not default on payment and, in particular, no application is made to initiate insolvency proceedings against him or payments have not been suspended. Should this be the case, then we may demand that the purchaser discloses all assigned accounts receivable and the debtors to us; provides all information required to collect the moneys; hands over the relevant documents and informs the debtors (third parties) regarding the assignment.
- (5) Should the purchase object be inseparably processed or mixed with objects which do not belong to us, then we will acquire co-ownership of the new object in proportion to the value of the purchase object (final invoice amount including VAT) in relation to the other objects which have been processed or mixed at the time of the processing or mixing. Should the processing / mixing be carried out in such a manner that the Customer's object must be viewed as the main object, then it is deemed to have been agreed that the purchaser will transfer us a corresponding ownership share. The Customer will thus safeguard the sole ownership or co-ownership which we have acquired for us.
- (6) We will undertake to release the securities to which we are entitled at the Customer's request insofar as the realisable value of our securities exceeds the accounts receivable which are being secured by more than ten percent; we will be responsible for the selection and quantity of the securities to be released.
- (7) The Customer will grant us the right to enter his business and storage premises respectively the premises on which the retained goods are located and to remove the retained goods from these premises insofar as the preconditions for this have been fulfilled. The Customer waives any right to object to this removal in advance.

## § 12 Use of software

Insofar as the scope of delivery includes software, then the Customer will be granted a non-exclusive right to use the software and the documentation supplied. It will be provided for use with the correspondingly specified supplied object or installation. Use of the software with more than one system is not permitted. Individual software modules may also only be used with the object supplied. The Customer may only reproduce, edit or translate the software or convert it from object code to source code to the extent permitted by law (Sect. 69 a ff. German Copyright Act (UrhG)). The Customer undertakes not to remove the manufacturer information – in particular copyright notes – or to change it without the prior explicit consent of the supplier. The supplier / software supplier will retain all other rights to the software and the documentation including the copy. Granting of sub-licences is not permitted.

## § 13 Place of jurisdiction - Place of fulfilment

- (1) Should the Customer be an entrepreneur, legal entity under public law or a special fund under public law, then our registered office is the place of jurisdiction. We are, however, also entitled to sue the Customer before the court with jurisdiction over his place of residence. The same applies if the Customer does not have any general place of jurisdiction in Germany or his place of residence or habitual place of residence is unknown at the time the suit is filed.
- (2) The place of fulfilment for delivery is our works or the relevant dispatch warehouse. The place of fulfilment for the Customer's payment obligation is Quickborn, Germany.
- (3) The laws of the Federal Republic of Germany apply; the validity of UN sales law and private international law (PIL) is excluded.

## § 14 Concluding provision

Should individual parts of these General Terms and Conditions of Sale be legally invalid, then the validity of the remaining provisions will not be impaired by this.