

Sect. 1 General / Scope of validity

- (1) Our Terms and Conditions of Purchase (TCP) apply to all business relationships with business partners and suppliers with regard to the supply of goods and/or services, irrespective of whether the supplier performs the service himself or purchases it from subcontractors. Our TCP apply exclusively; we will not recognize contradictory or deviating terms and conditions of the supplier unless we have expressly consented to their validity in writing. Our TCP will also apply if we accept delivery of goods/services by the supplier without reservation in full knowledge of supplier terms and conditions which are contradictory to, or deviate from, our TCP.
- (2) Our TCP only apply to businesspeople as defined by Sect. 310 Para. 1 German Civil Code (BGB). They may be viewed at any time on our homepage at www.smb-group.de.
- (3) Our TCP also apply for all future deliveries by the supplier until such time as we revoke them, even if these terms and conditions have not been expressly agreed. Agreed deviations will only apply to the delivery for which they have been confirmed in writing.
- (4) The supplier declares his consent to the use and storage of his data for the purpose of the agreed contractual activities.
- (5) Deliveries as defined by these TCP are both deliveries of goods as well as the provision of works and services.

Sect. 2 Order

- (1) The supplier is obliged to accept our order within a period of five working days; failure to do so will entitle us to withdraw our order free of charge (working days are defined as the days of the week Monday – Friday).
- (2) Deliveries will only be made on the basis of our orders. Our orders are only binding if we place them in writing or electronically or if, following verbal or telephone placement, they are confirmed by us in writing or electronically, stating the order number. The same applies to verbal side agreements or to subsequent amendments of the order.
- (3) The customer may also demand changes to the order following acceptance by the supplier insofar as this is reasonable for the supplier. In such cases prices and delivery dates must, insofar as necessary, be adjusted appropriately.
- (4) The supplier is not entitled to commission third parties to perform the delivery in its entirety or in substantial parts without the prior written consent of the customer.
- (5) The supplier assures that both the service as well as spare parts can be supplied to the customer at reasonable terms for 10 years from the date of delivery. Should, following expiry of this period, the supplier plan to discontinue delivery or corresponding spare parts, then he will be obliged to inform the customer of this in writing without delay and to provide the latter with the opportunity to place a final order.

Sect. 3 Price / Invoice / Terms of payment

- (1) The price stated in the order (final negotiated end price) is binding. The prices agreed are fixed prices. They exclude additional claims of any kind. Unless otherwise agreed, prices are quoted DDP (Incoterms 2010) “delivered duty paid” to the place of destination stated in the order, excluding the legal rate of value-added tax and including packaging.
- (2) A proper invoice must comply with legal requirements and the order specifications. Invoices must be sent to us by email at buha@smb-group.de stating the invoice number, order number and other classification characteristics. Invoices which do not comply with this will only be deemed to have been received on the date on which they were corrected. Insofar as nothing else has been agreed, invoices must be issued in EUR.
- (3) Where deliveries are made from areas outside the EU customs area, the shipment must be accompanied by a copy of the invoice and/or a pro forma invoice.
- (4) Insofar as nothing else has been agreed in writing, payments will be made 30 days after delivery and receipt of the invoice minus 3 % discount or after 60 days net. Payment and discount deadlines begin on receipt of the invoice, however not before the goods are received. In the case of services, these deadlines only commence after the services have been accepted, unless we are behind schedule with the acceptance. Insofar as documentation or similar documents are included in the scope of services, then the deadlines only commence after these documents have been submitted to us as per the corresponding contract.
- (5) We are entitled to rights of offsetting and retention to the extent granted by the law. In addition to this, we are entitled to withhold payments which are due insofar as we are still entitled to claims against the supplier resulting from incomplete or defective performance.
- (6) A reminder must be issued before the customer can fall into payment arrears. In the event of payment arrears, the supplier will, in accordance with Sect. 247 German Civil Code (BGB) (German Central Bank), be entitled to charge interest equivalent to 1% over the base interest rate on the claim.
- (7) Should the customer have to make payments prior to performance (advance payments), then the supplier must provide corresponding insurance or bank guarantees issued by a German financial institute in favour of the customer before the customer makes the payments.

Sect. 4 Scope of delivery / Delivery time / Lump-sum compensation for damages

- (1) The scope of delivery is determined by the order placed by us.
- (2) The delivery time specified in the order is binding.
- (3) Deliveries must be made during normal business hours. Information on these hours must be obtained from us.
- (4) The supplier undertakes to use environmentally friendly products and processes to the extent of his economic and technical possibilities. The supplier must, at our request, issue a procurement certificate for the goods supplied. This certificate must be free of charge.
- (5) The supplier is obliged to inform us immediately in writing if circumstances

occur or become recognizable which will result in the agreed delivery date not being met, providing reasons for the delay. The expected length of the delay must be notified immediately in writing. Notification of the delay does not exempt the supplier from the consequences of the delay.

- (6) Insofar as necessary, required protective devices; proofs of origin; storage, assembly and operation instructions; and safety data sheets in official EU languages must be provided free of charge. The same applies to documents which are required for the maintenance and servicing of the shipment.
- (7) Should delivery be delayed, then we will be entitled to demand lump-sum compensation for damages resulting from the delay, charged at the rate of 1% of the shipment value per completed week, however not more than 5%; further legal claims (withdrawal and compensation instead of performance) remain reserved. The supplier is entitled to prove to us that no, or significantly less damage, occurred as a result of the delay.

Sect. 5 Delivery / Transfer of risk / Document / Packaging

- (1) Insofar as nothing else has been agreed in writing, delivery is carried out duty paid including orderly packaging, DDP (Incoterms 2010) to a stated place of destination. If a place of destination is not stated, then it will be the customer's domicile.
- (2) Transfer of risk takes place in accordance with the agreed Incoterms.
- (3) Partial deliveries require our consent.
- (4) Every shipment must include orderly shipping papers/documents. They must include information on the object(s), order items, quantity, weight, packaging, type of shipment and markings as well as our order number. Regulations regarding hazardous goods transport must be complied with; in particular, hazardous goods must be identified as such. The supplier is responsible for, and bears the costs of, the consequences of incorrect, incomplete or late shipping papers/documents.
- (5) Shipments must be delivered with orderly packaging. Excess and/or non-environment friendly packaging must be avoided. We are, at our discretion, entitled to return, recycle or dispose of packaging at the supplier's cost.

Sect. 6 Interruption to delivery / Withdrawal

- (1) Should circumstances for which the customer is not responsible result in a shutdown of, or impact on, the customer's operations or the operations of one of his customers for whom the delivery is intended, then the customer will not be obliged to accept the delivery for the duration of the shutdown of, or impact on, operations. Claims for damages by the supplier against the customer are excluded to this extent.
- (2) The customer is entitled to partially or fully withdraw from the contract insofar as he has material grounds for doing so. Material grounds are natural disasters, restrictions on imports and exports, strike, lock-out or other disruptions to operations both on the customer's and on the supplier's premises; furthermore in the event the supplier suspends payments and/or files a petition for the opening of insolvency proceedings regarding his assets.
- (3) The customer is, furthermore, entitled to exercise his legal rights of withdrawal.
- (4) Should the customer withdraw from the contract either partially or fully, then the supplier's claims to payment will be void. Any advance payments which have been made must be reimbursed to the customer immediately and without deductions. The supplier has no right of retention.
- (5) Should the customer withdraw from the contract because the supplier has suspended payments and/or filed a petition for the opening of insolvency proceedings regarding the supplier's assets, then the customer will, in return for reasonable compensation, be entitled to a claim to the supplier's equipment or any deliveries already made by the supplier which are required for continuation of the work.

Sect. 7 Obligation to provide information

- (1) The supplier must inform us by means of a written notification in good time regarding changes in manufacturing processes; changes in materials or suppliers' parts for products or in services; relocation of production sites; or changes in procedures or equipment for testing of components or in other quality assurance measures. We are, to the extent required, entitled to verify whether the changes could have a negative impact on the product. The supplier must, at our request, make the documents required for this purpose available and facilitate audits to the extent required.

Sect. 8 Warranty

- (1) The supplier guarantees that all deliveries are free from defects and correspond to the order and its specifications; are fit for the intended purpose and use; and fulfil the latest generally accepted engineering standards as well as the relevant national and international legal regulations including the regulations and specifications of authorities, employers' liability insurance associations and trade associations. Should the supplier have concerns about the customer's proposed design, then he must inform the customer of this in writing immediately.
- (2) The warranty period is 24 months insofar as nothing else has been agreed in writing. The warranty period begins upon start-up or final acceptance of the delivery by the customer. Should no start-up or final acceptance be foreseen, then the warranty period will begin upon delivery to the customer's premises. Where deliveries are sold on by the customer, the warranty period begins upon start-up or final acceptance by the customer's customer. Should no start-up or final acceptance by the customer's customer be foreseen, then the warranty period will begin upon delivery to the premises of the customer's customer. The warranty period ends at the latest 36 months after delivery to the specified place of destination.
- (3) The customer will inspect the delivery for outwardly recognizable quality and quantity deviations within a reasonable period of time. The supplier will be notified immediately regarding any defects which have been identified. The supplier will be notified regarding quality and quantity deviations which are

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not outwardly recognizable as soon as these have been identified within the course of orderly business processes. The notification will be deemed to be timely if it is made within a period of 10 working days following identification of the defect.

- (4) In the case of quantity purchases the customer is only obliged to inspect random samples. Should this reveal that a significant proportion of the random sample does not correspond to contractual or legal requirements, then the customer will be released from any further verification and entitled to reject the entire delivery. Rejection of a delivery does not represent a declaration of withdrawal from the contract.
- (5) Should defects occur within the warranty period, then the customer will be entitled to assert his legal warranty claims at his discretion and, over and above this, to demand compensation for expenses and damages from the supplier. Warranty claims expire at the end of a period of 12 months commencing on the date of the notification of defects.
- (6) The supplier will bear all expenses which arise in connection with the identification and rectification of defects, in particular inspection costs; removal and installation costs; transport, road charges, labour and material costs and travel expenses. This also applies insofar as the expenses increase due to the fact that the delivery object is taken to another location which is not the place of destination.
- (7) Should the supplier fail to meet the customer's demand to rectify the defect within the period of time specified by the customer, then the customer will, at the supplier's cost, be entitled to carry out the required measures himself or to have them carried out by a third party. Insofar as no deadline is required, then the customer will be entitled to this right without setting a deadline.
- (8) The customer may, following prior notification of the supplier (by email or telephone) carry out measures himself at the supplier's cost to remedy minor defects or to prevent disproportionately major damages or to avoid any risk to operational safety on the premises of the customer or of third parties if the supplier cannot be contacted (during business hours) respectively the supplier rejects the warranty claim. The customer will inform the supplier without delay regarding the reason for, type and extent of the measures. The supplier's warranty obligation will not be affected by this.
- (9) In the case of deliveries or parts thereof which cannot be used by the customer during the duration of the defect and/or of its rectification, the warranty period will be extended for a period equivalent to the duration of the interruption of use. In the case of repaired or substitute deliveries or parts thereof, the warranty period will recommence on the date on which the defect was rectified.

Sect. 9 Quality assurance / Product liability / Indemnity / Liability insurance cover

- (1) The supplier is informed that the customer sells his products worldwide. The supplier undertakes to comply with the legal provisions in force for the delivery at the place of destination, in particular regarding accident prevention; occupational and machinery safety; and environmental protection.
- (2) The supplier must carry out quality assurance which is appropriate in its form and extent and complies with the latest generally accepted engineering standards and provide proof that he has done so at our request. The supplier will, at our request, conclude a corresponding quality assurance agreement with us.
- (3) Should a claim be made against us due to infringement of legal provisions, in particular safety regulations, or due to national or international product liability, then the supplier will be obliged to indemnify us and our customers against all claims insofar as these are caused by the supplier's delivery.
- (4) The required notification of the relevant competent authority as per the German Product Safety Act (ProdSG) will be carried out in coordination with the supplier.
- (5) The supplier undertakes to insure himself against all product liability risks, including recall risks, to an appropriate level for the duration of this contract – i.e. until the expiry of the relevant period of limitation for defects and, at our demand, to present the insurance policy to us for inspection and to provide proof in the form of a confirmation from his insurance company that the contract is currently in force. He must, without being requested to do so, inform us immediately if the insurance contract is terminated. The extent and amount of any claims to warranty performance and damages to which we are entitled will not be limited by the level of the insurance coverage.

Sect. 10 Third-party rights

- (1) The supplier warrants that he is not infringing any third-party rights by making the delivery. He undertakes to indemnify us and our customers against such claims upon our first written demand should we be subject to a third-party

claim due to failure to comply with this guarantee undertaking.

- (2) The supplier is obliged to carry out supplementary performance in the form of rectification of a defect at his own cost to ensure that no third-party rights continue to be infringed. Our further rights to price reduction and withdrawal remain unaffected.
- (3) The statute of limitations for these claims is 36 months, commencing upon transfer of risk.
- (4) The supplier is obliged to provide the customer with assistance within the scope of any out-of-court or legal disputes with the holder of rights. For the rest, the customer's rights in the event of legal deficiencies are determined by the statutory provisions.

Sect. 11 Assignment / Attachment / Retention of title

- (1) Any retention of title on the part of the supplier is only binding if it has been agreed with us in writing outside of these General Terms and Conditions of Purchase.
- (2) The supplier may only assign his claims against the customer or instruct a third party to collect these claims if the customer provides his consent to this.
- (3) The supplier must notify the customer immediately in the case of attachments, seizures or other third-party disposals concerning deliveries owed by the supplier.

Sect. 12 Export controls / Customs

- (1) The supplier undertakes to comply with applicable national and international customs and foreign trade laws. He must, at the latest three weeks after the order has been placed and in the case of any changes, inform us immediately in writing regarding all information and data which we require to comply with foreign trade law concerning exports, imports and re-exports, in particular:
 - Declaration for export controls: Confirmation that the goods supplied are not included on the export list ("AL" annex to the German Foreign Trade Regulations [Außenwirtschaftsverordnung]) respectively in the Dual Use Regulation and are also not subject to any other export restrictions / export authorization requirements. The supplier furthermore declares that all obligations arising from foreign trade laws fall within his scope of responsibility. Existing embargo regulations, bans and restrictions as well as other restrictions, in particular arising from customs law and international and/or political measures regarding international trade, have been complied with.
 - All applicable export list numbers, including the "export control classification number" as per the US Commerce Control List (ECCN)
 - The statistical goods number as per the current goods classification used for foreign trade statistics and the HS (harmonized system) code, and
 - The country of origin (non-preferential origin) and, insofar as requested by us, supplier's declarations regarding preferential origin (in the case of European suppliers) or certificates of preference (for non-European suppliers).
- (2) Should the supplier culpably breach his obligations as per Sect. 11 (1), then we will be entitled to withdraw from the contract and to assert claims for all damages which we incur as a result. The supplier indemnifies us to this extent.

Sect. 13 Non-disclosure / Confidentiality

Concepts, drawings, calculations, other documents and materials belonging to us may only be used solely for our purposes and solely to the extent authorized by us and may not be reproduced or made accessible to third parties without our prior written consent. In addition to this, the supplier must treat our orders and all corresponding commercial and technical details as business secrets. The supplier is not entitled to use our commercial name or logo.

Sect. 14 Place of jurisdiction / Place of fulfilment / Applicable law

- (1) Where the supplier is a businessman the place of jurisdiction is our domicile; we are, however, also entitled to sue the supplier in the court at his place of residence.
- (2) The place of fulfilment for all delivery obligations is, insofar as nothing else has been agreed in writing, the place of destination stated by us. Should no such place be stated, then the place of fulfilment will be our domicile.
- (3) The law of the Federal Republic of Germany applies; validity of the UN Sales Convention and international private law (IRP) is excluded.

Sect. 15 Concluding provision

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