

General Terms and Conditions for Supplies and Services

I. Range of application

1. SMAG's supplies, services and offers are exclusively subject to these General Terms and Conditions for Supplies and Services (hereinafter referred to as "Conditions"), unless agreed upon otherwise in writing. Any conditions of the orderer deviating from or conflicting with these Conditions or other general terms and conditions for purchase are hereby expressly rejected.
2. These Conditions shall be valid only with regard to entrepreneurs in the sense of Section 310, para. 1 / Section 14 BGB (German Civil Code) (entrepreneurs, legal entities under public law, special funds under public law).

II. Offer and conclusion of contract

1. SMAG's offers shall be without engagement and non-binding, unless expressly stated otherwise.
2. Any specifications, drawings, pictures, dimensions, weights or other parameters and any referenced E-DIN- or VDE-standards or –dates contained in offers, catalogues, electronic media or other advertising messages, shall not be regarded as guaranteed characteristics but only as simple statements of characteristics unless the parties have otherwise expressly agreed upon in writing. These statements may be adjusted as long as no contract is concluded, unless such statements are referred to as binding in an offer of SMAG.
3. SMAG personnel are not authorized to make any additional oral collateral agreements or oral confirmations that go beyond the content of the written contract.
4. The rights to all images, offers, drawings, descriptions, samples and cost estimates are vested with SMAG. The orderer is not allowed to copy, make public those documents or pass it on or make it available to a third party. The orderer shall be obliged to return these documents and data carriers and any copies thereof at request of SMAG.

III. Prices

1. Unless otherwise stated, SMAG shall be bound to the prices quoted in their offer for a duration of 30 days from the date of the offer. Otherwise the prices indicated in SMAG's order confirmation plus the corresponding legal VAT shall apply.
2. Any additional supplies and services shall be invoiced separately.
3. Unless otherwise agreed upon, the prices are to be understood on an ex works basis inclusive of loading in the factory, but exclusive of packaging and plus VAT at the legally applicable rate.

4. In case that more than six months have elapsed between the conclusion of a contract and the agreed and/or actual delivery date and SMAG not being in default, the list price which is authoritative is the one valid on the day of delivery or supply, unless the parties have expressly agreed upon fixed prices for a certain period.
5. SMAG reserves the right to increase its prices accordingly in case that there exists an increase in prices of sub-suppliers or unexpected increases in costs for wages and transport and provided that the parties have not expressly agreed upon fixed prices for a certain period.

IV. Time of deliveries and performance

1. Unless otherwise expressly agreed upon, dates or terms of delivery stated by SMAG are non-binding.
2. If the delivery or performance is delayed due to Force Majeure and due to any circumstance that substantially and not only temporarily interferes with or prevents SMAG's fulfilment of their obligations – including in particular strike, lock-out, official directives, etc., even if such circumstances concern SMAG's suppliers and their sub-suppliers – SMAG shall not be bound to the dates or terms of delivery and performance, whether binding or not. Such circumstances shall entitle SMAG to either delay the delivery or the performance by the duration of the delaying circumstance plus a reasonable starting period or to withdraw from all or part of the contract by reason of the unfulfilled part of the contract. SMAG may only refer to such circumstances if the orderer has been informed thereof immediately.
3. If the delaying circumstance persists for more than three months, the orderer, after notification of a reasonable grace period, shall be entitled to withdraw from the unfulfilled part of the contract.
4. If the delivery period is extended or SMAG are exempt from their obligation, this shall not entitle the orderer to derive therefrom any claims for damages.
5. SMAG shall at any time be entitled to partial deliveries and performances if such partial deliveries or performances are reasonable for the orderer.
6. Fulfilment of SMAG's delivery and performance obligations shall be subject to punctual and orderly fulfilment of the orderer's obligations.
7. If the orderer is in default of acceptance, SMAG shall be entitled to claim for compensation of the resulting damage; the risk of incidental deterioration and the risk of accidental loss shall pass to the orderer upon occurrence of default of acceptance.

V. Passing of risks

The risk shall pass to the orderer as soon as the consignment is delivered to the person dealing with the transport of the goods or as soon as it has left SMAG's warehouse for shipment. If the shipment is delayed upon the orderer's request, the risk shall pass to him upon notification of readiness of dispatch.

VI. Orderer's rights in case of defects

1. The products shall be free of any material or manufacturing defects upon delivery. The warranty period for defects shall be one year from the date of delivery. This shall not apply where longer periods are prescribed by law according to Section 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code (BGB), in the case of intent, fraudulent concealment of the defect or non-compliance with guaranteed characteristics (Beschaffenhheitsgarantie). The legal provisions regarding suspension of the statute of limitations ("Ablaufhemmung", "Hemmung") and recommencement of limitation periods shall be unaffected.
2. Unless SMAG's operating or maintenance instructions and warnings are complied with or if the products are modified, if any parts are replaced or consumables are used that do not comply with the original specifications, any claims by reason of defective products shall be rejected unless the orderer refutes the correspondingly substantiated assertion that one of the above circumstances has caused such defect.
3. The orderer shall immediately advise SMAG's service manager in writing of any defect, at the latest within one week after receipt of the delivered goods. If it is impossible to detect a defect within this period notwithstanding a thorough check, SMAG shall be informed about such defect immediately after having detected it.
4. If the orderer advises SMAG of any defective product, SMAG shall request at their discretion and expense either
 - a. that the defective part or equipment shall be sent to SMAG for repair and subsequent return to the orderer
 - b. that the orderer shall keep the defective part or equipment and that a SMAG service technician shall be dispatched to the orderer's works in order to repair the defective part or equipment
5. The orderer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject-matter of the supplied products has subsequently been brought to another location than the orderer's branch office, unless doing so complies with the normal use of the supplied products.

5. If the rectification fails within a reasonable period of time, the orderer may, at his discretion, claim reduction of payment or withdraw from the contract.
6. Any warranty for normal wear and tear is excluded.
7. Only the direct orderer shall be entitled to make any claims for defects against SMAG and such right shall not be assignable.

VII. Spare parts

SMAG shall supply spare parts for the delivered equipment at the currently valid spare parts prices for a duration of five years from delivery of the equipment.

VIII. Reservation of title

1. Until all demands to which SMAG is or will be entitled to for any legal reason against the orderer have been fulfilled (including all balance demands from the current account), the orderer shall provide SMAG with the following securities, which SMAG will release at the demand of the orderer at their own discretion, insofar as their value exceeds the demand by more than 20 %.
2. The delivered goods remain the property of SMAG. Processing and transformation of the goods shall always take place for SMAG as the manufacturer, however without any obligation for SMAG. If SMAG's co-ownership expires due to joining, it shall be deemed already agreed with immediate effect that the orderer's (co)ownership in the uniform object shall be transferred to SMAG proportional to the share of the value (invoice value). The orderer shall safeguard SMAG's (co-owned) property free of charge. Goods in which SMAG is entitled to (co-) ownership shall be termed reserved goods in the following.
3. The orderer shall have the right to process and to sell the reserved goods in proper business transactions, as long he is not in delay. Pledging or transfer of ownership as security are not permitted. Any demands (including all balance demands for current account) which result from the further sale or any other legal reason (insurance, non-permitted action) with respect to the reserved goods shall be herewith transferred by the orderer to their full extent to SMAG. SMAG irrevocably authorises the orderer to collect the demands assigned to SMAG on his account in his own name. The authorisation to collect can only be cancelled if the orderer fails to meet his payment obligations.
4. In the case of seizure of the reserved goods by third parties – in particular pledging - the orderer shall inform the third party about SMAG's ownership and shall immediately inform SMAG accordingly to enable them to enforce their ownership. The orderer shall be held liable for any legal costs incurred by SMAG in this connection if the third party is not able to reimburse such costs.

5. In the case of contract infringements by the orderer, especially in case of delayed payment, SMAG shall be entitled to withdraw from the contract and to claim possession of the reserved goods. The exercise of the reserved title or taking back goods shall not be considered as a withdrawal from the contract.

IX. Payment

1. Unless otherwise agreed upon, SMAG's invoices shall be due 14 days after the date of invoice without any deductions, however, not later than 30 days after delivery.
2. A payment shall not be deemed to be made unless SMAG can dispose of the amount. If payment is made by cheque, the payment shall not be deemed to be made unless the cheque has been paid.
3. If the orderer is in delay, then SMAG shall be entitled to demand payment of interest of at least 8 percentage points above the base rate as liquidated damages. SMAG shall have the right to provide evidence of a higher damage due to the delay.
4. If after conclusion of a contract SMAG becomes aware of any circumstances which challenge the creditworthiness of the orderer, especially if a cheque is not paid or if the orderer stops payment or if SMAG becomes aware of any other circumstances which challenge the creditworthiness of the orderer, then SMAG shall be entitled to accelerate maturity of the total remainder of the debt, even if SMAG has already accepted any cheques. SMAG shall in this case also be entitled to demand advance payments or securities.
5. The orderer shall only be entitled to invoke a setoff, withholding or abatement right, even after notification of defects or enforcement of counterclaims, if the counterclaims are legally binding or undisputed.
6. The orderer shall not be entitled to invoke a withholding right for counterclaims unless such claims arise from the same contractual relationship.

X. Design modifications

SMAG reserve the right to modify the design at any time, unless this will lead to an impairment of the intended use of the delivered goods and only in case that it is reasonable for the orderer. SMAG, however, shall have no obligation to carry out such modifications on products already delivered.

XI. Industrial Property Rights

1. SMAG shall hold the orderer and his customers harmless of any claims for infringement of copyrights, trademarks or patent rights, unless the design of a delivered good originates from the orderer. The amount of this obligation is limited to the foreseeable damage.

SMAG's obligation to hold the orderer harmless of the above claims is additionally based on the condition that the right to institute legal proceedings is relinquished to SMAG and that the alleged infringement is exclusively imputable to the design of the goods delivered by SMAG without any connection or use of other products.

2. SMAG shall have the right to get released from their obligations mentioned in paragraph 1 by either
- a. obtaining the required licences concerning the patents that are said to have been infringed
 - b. placing a modified version of the delivered good or parts of it to the orderer's disposal in order to ensure that the reproach of infringement concerning the delivered good is eliminated if the modified delivered product or part of it replaces the infringed delivered product or part of it.

XII. Nondisclosure

Unless otherwise explicitly agreed upon in writing, the information submitted to SMAG in connection with the order shall not be deemed to be confidential.

XIII. Liability

1. Any indemnity claims, irrespective of the type of neglect of duty, including inadmissible actions, shall be excluded, unless there is evidence of wilful intent or gross negligence.

2. In case of infringement of substantial contractual obligations SMAG shall be responsible for any wilful intent, but only up to the amount of the foreseeable damage. Any claims for loss of profit, saved expenses, indemnity claims of third parties and for other collateral and subsequent damages may not be asserted, unless a characteristic guaranteed by SMAG is explicitly intended to protect the orderer against such damages.
3. The limitations and exclusions of liability mentioned in paragraphs 1 and 2 shall not apply to such claims that are derived from SMAG's fraudulent behaviour neither to a liability of guaranteed characteristics, to requirements under the Product Liability Act and damages because of death and injury of body or health.
4. As far as SMAG's liability is excluded or limited, this shall also apply to employees, wage earners, agents and persons employed to perform an obligation of SMAG.

XIV. Applicable law, place of jurisdiction, severability

1. These Conditions and the entire legal relationship between SMAG and the orderer shall be subject to the jurisdiction of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
2. The place of jurisdiction for any dispute directly or indirectly arising out of or in connection with the contract shall be the court in Salzgitter. SMAG shall have the right to bring an action against the orderer at his general place of jurisdiction.