

Standard Purchasing Terms (SPT) - SMB Industrieanlagenbau GmbH

**1 General terms; Scope**

- 1.1 The following SPT are a material component of all transactions between SMB Industrieanlagenbau GmbH, with its registered office in Gewerbestraße 25, A-8075 Hart bei Graz, Austria (hereinafter referred to as "Purchaser") on the basis of which it purchases raw materials, semi-finished products, system components and services from the legal entities described below as "Supplier".
- 1.2 If agreements are reached with regard to specific orders the terms of which vary from these SPT, these SPT apply subordinately and on a supplemental basis.
- 1.3 The applicability of standard business terms of a Supplier is hereby rejected even in the event they are transmitted to the Purchaser in an order confirmation or other manner. Actions by Purchaser to fulfil contractual obligations do not represent consent to the application of terms that vary from those set out herein. If an order makes reference to offer documentation of the Supplier, this does not represent recognition of the Supplier's business terms.

**2 Side agreements; Impermissible advertising**

- 2.1 Oral side agreements, as well as exclusions, amendments and/or additions to these SPT require express written confirmation from the Purchaser to be effective. The written form requirement may only be waived in writing.
- 2.2 The Purchaser reserves the right to cancel an order in whole or in part for good cause. In such cases, the Seller shall solely be compensated for actual, verifiable costs without credit for lost profits. The terms of § 1168 Austrian General Civil Code (ABGB) in this regard are waived. In the event good cause for the Purchaser's cancellation of an order is within the sphere of control of the Supplier, it is liable to the Purchaser for all negative consequences resulting to the Purchaser.
- 2.3 Good cause includes in particular: Insolvency on the part of the Supplier, frustration of contract, obvious grounds to distrust the Supplier, delay in performance, non-conforming performance, or any other circumstance that significantly reduces the Purchaser's economic interest in adhering to the order or even renders adherence to the order unacceptable.

**3 Drawings; Models; Tools; Confidentiality**

- 3.1 The Purchaser retains ownership of and/or its copyrights and/or other industrial property rights in all illustrations, drawings, models, samples, computations, construction plans or other documents and/or tools provided by the Purchaser for purposes of executing the order or for the production of which it has paid. Documents may only be used for the agreed purpose and may not be copied or made accessible to third parties. Following completion of the order, they must be returned to the Purchaser at no cost and without request to do so or be destroyed following consultation with the Purchaser. The Supplier is liable to the Purchaser for all damages caused by its failure to comply.
- 3.2 The Supplier shall not disclose to third parties any technical and business information it receives in the course of its business relationship with the Purchaser; this obligation extends beyond the term of the business relationship.
- 3.3 The use of orders or documents referred to in Section 3.1 for reference and/or advertising purposes requires the advance consent of the Purchaser.

**4 Duties of inspection and warning**

- 4.1 Consent on the part of the Purchaser to drawings, computations and other documents does not affect the Supplier's general responsibility with regard to the subject of performance. This applies likewise to suggestions, recommendations and other participation on the part of the Purchaser. Without receiving separate remuneration therefore, the Supplier is required to carefully review all documents, instructions and materials provided and to provide timely written warning of any errors.

**5 Inspections**

- 5.1 Upon request, the Supplier is required to grant the Purchaser the opportunity at any time to inspect the degree of completion, the use of appropriate materials, the use of required qualified staff and the proper execution of the product/service ordered. At the Purchaser's discretion, it must be provided either relevant documents and/or pictures and/or granted access to production facilities following timely, advance notice. Such inspection replaces neither acceptance nor does it in any way limit the Supplier's general responsibility with regard to its performance.

**6 Employees of the Supplier**

- 6.1 When providing the Purchaser with assembly services the Supplier undertakes to deploy exclusively appropriately qualified personnel with valid residence and work permits and assumes complete responsibility for compliance with all applicable safety requirements. The Purchaser may, at any time, reject the use of personnel who do not comply with these requirements or who violate safety regulations. In addition, the Supplier undertakes to properly remunerate its employees and to remit social security contributions and personnel-related taxes in accordance with applicable laws and regulations. A contractual penalty in the amount of EUR 2,000.00 per man/workday is owed in the event of violations of the above terms.
- 6.2 The Supplier consents to the handling of personal data for purposes of executing an order and undertakes to obtain similar consent from its employees and sub-contractors as well.

**7 Replacement parts**

The Supplier warrants that replacement parts and consumables will be available for all orders for a period of at least ten years following the expiry of the warranty period.

**8 Packaging; Shipping and Transportation**

- 8.1 The Supplier is required to pack, load and transport products subject to order in an appropriate manner and is required to accept return of packaging materials from the Purchaser at no cost.
- 8.2 The Supplier is responsible for determining whether the products subject to order, or their components, must be designated as **hazardous materials** within the meaning of respectively applicable laws and regulations in the country of origin, the country of destination and all transit countries. It must declare, label and package products/components in accordance with such laws and regulations, provide required documents and inform the Purchaser thereof.

**9 Prices; Pricing; Payment terms; Default**

- 9.1 The agreed prices represent fixed prices.
- 9.2 To the extent not otherwise agreed in writing, all prices are DDP (specified location) pursuant to INCOTERMS 2010.
- 9.3 Payment shall be made either within 14 days with a 3% cash discount, or within 30 days with a 2% cash discount, or within 60 days net following proper contractual performance or the attainment of a milestone triggering a payment obligation and in each case following receipt of an auditable invoice. Payment will be made by bank transfer which our bank will be instructed to execute on the Wednesday following the day on which payment is due. **The Supplier shall bear any fees due in connection with the funds transfer.**
- 9.4 Any agreed progress payments do not relieve the Supplier of its obligation to list and invoice all supplies of goods and services in a separate final invoice.
- 9.5 In no event do payments by the Purchaser constitute the recognition of proper and defect-free performance equivalent to acceptance.

**10 Set-off; Right of retention; Intra-group settlement**

- 10.1 The Purchaser has rights of set-off and retention to the extent provided by law. The Supplier also has rights of set-off and retention with regard to claims it has against enterprises affiliated with the Supplier within the meaning of § 15 Austrian Stock Corporation Act (AktG).
- 10.2 Disputes as to the amount of remuneration to be paid to the Supplier do not entitle the Supplier to suspend its performance in whole or in part, even on a temporary basis. In case of a defective supply/service, the Purchaser is entitled to retain payment pro-rata until the date on which proper fulfilment occurs.

**11 Delivery times**

- 11.1 Agreed delivery times are binding. The Purchaser may suspend the delivery date at any time for up to three months without entitling the Supplier to claim additional costs. Early deliveries/performance and/or partial deliveries/partial performance require the Purchaser's express written consent.
- 11.2 The Supplier is obliged to provide the Purchaser immediate written notice in the event circumstances which will result in an inability to comply with delivery times occur or become apparent.
- 11.3 Rights upon failure to comply with deadlines
- 11.3.1 In the event of any failure to comply with a deadline, the Purchaser is entitled to demand 0.5% of the contract price per calendar day of such failure, however at least EUR 1,000.00 (flat rate charge for disposition costs), as a contractual penalty in addition to performance of the contract. In the event the amount of the contractual penalty exceeds EUR 1,000.00, it is limited to 15% of the total contract price.
- 11.3.2 In addition, and without prejudice to other rights, the Purchaser may, following expiry of a reasonable grace period determined by it, or without need to establish a grace period if the supply/service is no longer of interest to it following the delay, imminent harm results from the delay, in order to avoid further damage or in cases of urgency, have the delayed supply/service performed by a third party at the Supplier's expense or may withdraw from the contract and demand compensation for damages.
- 11.3.3 In all cases of substitute performance by the Purchaser, the Supplier, at its expense, shall provide all required information to the Purchaser and shall hand over all documents in its possession as well as, in the case of all own rights or third party rights in the foregoing, transfer rights of use therein and/or immediately indemnify and hold the Purchaser harmless from any third party claims arising from the foregoing.

**12 Invoicing**

The Supplier is obliged to include on all invoices, shipping documents and/or bills of delivery the Purchaser's order number and commission number as well as the contractually agreed labelling; otherwise any consequences shall be borne by the Supplier (e.g. delays, additional costs). The agreed payment term commences upon receipt of an invoice that complies with the then-applicable laws and regulations including proof of delivery and/or performance.

**13 Warranty; Notice of defects; Recourse**

- 13.1 The Supplier guarantees that its supply/performance conforms to recognised standards and the state of the art applicable at the time of the order, applicable laws, regulations and standards in the country of the Supplier and in the country of destination, agreed properties as well as relevant safety, workplace safety and accident prevention regulations, that its supply/performance has the guaranteed characteristics, is otherwise free of material defects and defects of title and that its ownership in all goods delivered is free of all third party rights.
- 13.2 The foregoing guarantees are understood to apply in addition to the Supplier's statutory warranty obligations. To the extent not otherwise agreed in writing, the Purchaser's guarantee and warranty claims lapse 36 months from acceptance by the operator of the systems. This is without prejudice to longer limitation periods provided by law.
- 13.3 The Purchaser is not obliged to provide notice of objection pursuant to § 377 Austrian Business Enterprise Code (UGB). Defects are presumed to have existed at the time of delivery during the first three years following acceptance.
- 13.4 In all cases and at its discretion, the Purchaser may demand that the Supplier cure a defect or provide substitute performance; the Supplier shall bear all expenses required to cure a defect or provide substitute performance, including any emergency repairs.
- 13.5 After receipt of notice from the Supplier, the Purchaser is also entitled to cure the defect or make a covering purchase at the expense of the Supplier if there is risk of imminent harm in delay, there is unusual urgency, a reasonable grace period for curing a defect has expired without success, an attempt at subsequent performance has failed or if this appears appropriate in order to reduce damages.
- 13.6 In the event the Purchaser is entitled to cure a defect pursuant to Section 13.5 above, the Supplier's obligations are subject to the application of Section 11.3.3.
- 13.7 To the extent, and for as long as, supplies/services may not be used in conformance with the contract as the result of subsequent performance by the Supplier, the warranty period is extended for the duration of such interruption. In the case of supplies/services repaired and/or replaced within the scope of the warranty, the limitations period commences anew upon acceptance of the repair/replacement.

**14 Liability and Insurance**

- 14.1 The Supplier is liable for all damage and detrimental effects incurred in connection with its supplies of goods and services. This applies, inter alia, to damages incurred as a result of violations of applicable environmental regulations, costs arising in connection with product defects or product recalls, or claims asserted by third parties in connection with a violation of industrial property rights. The Supplier is required to indemnify and hold the Purchaser harmless as against all such claims upon first written request. In addition, it is liable for all damages and lost production experienced by the Purchaser, its purchasers and customers. In the event of claims asserted pursuant to the Austrian Product Liability Act (PHG), the Supplier is required to indicate the importer, the manufacturer and other parties subject to liability within one week. The Supplier reserves the right to demand additional damages.
- 14.2 The Supplier is required to maintain appropriate insurance cover with a cover amount of at least EUR 5,000,000.00 against all named and other risks associated with its business and to provide proof of such insurance cover without being requested to do so.

**15 Sub-contracts**

Sub-contracting the order in whole or in part requires authorisation on the part of the Purchaser. In the event the Supplier defaults in payments owed to its suppliers and sub-contractors, the Purchaser is entitled to pay them directly, which payments are deemed to be payment in lieu of performance in relation to the Supplier to the extent they relate to legitimate claims on the part of the sub-contractor. In the case of default or imminent or actual insolvency on the part of the Supplier, the Purchaser is entitled to accede to all contracts with sub-contractors.

In all cases, third parties, in particular sub-suppliers and sub-contractors, relied upon by the Supplier for the performance of its obligations associated with the order or who were otherwise involved by the Supplier in connection with its performance, are vicarious agents of the Supplier.

**16 Severability clause**

In the event any individual contractual provisions are invalid, all remaining contractual terms remain in full force and effect. The parties undertake to immediately replace any such invalid provision with a supplemental agreement that comes as close as possible to achieving the economic purpose of such invalid provision.

**17 Place of performance**

The place of performance for work performed by the Supplier is the agreed place of use; for payments by the Purchaser, the place of performance is Graz.

**18 Jurisdiction; Applicable law**

- 18.1 To the extent the Supplier is an entrepreneur, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for any form of proceedings is the competent court in Graz with subject matter jurisdiction; the Purchaser may also bring suit against the Supplier at its general place of jurisdiction.
- 18.2 All legal relationships between the parties are exclusively governed by the laws of the Republic of Austria subject to the exclusion of the United Nation Convention on Contracts for the International Sale of Goods.