

## **General Terms and Conditions of Business of SMB Industrieanlagenbau GmbH**

### **1. General Provisions**

- 1.1 These General Terms and Conditions of Business form an essential and integrated component of any quotation made by SMB Stahl- und Maschinenbau Gesellschaft m.b.H. (referred to after this as the Vendor) and of each agreement entered into with it. They apply to contracts for services as well, but not to transactions with consumers.
- 1.2 Any delivery conditions, purchasing conditions and similar of the Purchaser that contradict these General Terms and Conditions of Business are not legally binding on the Vendor unless the latter acknowledges them in writing in advance.
- 1.3 Oral side agreements, supplements or amendments to these General Terms and Conditions of Business are only valid if the Vendor has confirmed them in writing.
- 1.4 The Vendor reserves rights of ownership to and copyright in drafts, drawings and facilities that it has prepared or had prepared for it. The Purchaser, alone, is responsible for the legitimacy of the Vendor making use of sketches, models and so on sent to the latter by the former. The Vendor is under no obligation to check whether the documentation concerned infringes any existing third party industrial property rights.
- 1.5 Requirement to check and give notice of defects: the Purchaser is obliged to check, thoroughly and expertly, all its details, plans and instructions and all the production and assembly drawings and documentation handed over by us in detail. We deliver and assemble without knowledge of the application purpose. We only check plans, materials and instructions supplied and give any warning of defects in them if we are receiving a separate payment for checking or if exceptionally major and immediately obvious faults have been revealed. Classification is undertaken in accordance with DGRL 97/23/EG – computations, plausibility checks, checking of drafts and acceptance by a nominated office.
- 1.6 The assembly conditions of Austria's mechanical engineering and steel construction industry trade association that are current at the time, apply by way of amplification to assembly works, provided such conditions do not contain other or more precise rulings.
- 1.7 If we provide services that are invoiced on a time taken basis (per job), whether they have been provided with or without materials or tools being made available, then this takes place in the context of skilled work being undertaken for gain, with the personnel seconded working on the instructions, at the risk and under

the responsibility of the client, unless something else has been agreed.

## **2. Effective date of the contract**

- 2.1 Each order placed on the Vendor or its representative counts as written acceptance of its quotation on the conditions given therein, and becomes legally binding on the Vendor when production is undertaken or when the order is confirmed in writing. The contract therefore only comes into force on the date the order is confirmed or production begins, whichever occurs first.
- 2.2 As soon as the Vendor has accepted an order, the Purchaser may only cancel it with the express written consent of the former. If the Vendor does consent to a cancellation it counts as having been agreed that no damage of any kind whatsoever should arise for it, such that the Vendor has the right in such a case to demand reimbursement for all the services it has provided, including any work that may be in progress, and for all the expenses it has incurred, cancellation fees, the profit margins that it was expecting, and so on.
- 2.3 Up until two weeks have elapsed following the placing of an order the Vendor has the right to refuse it without detailing its reasons for doing so.
- 2.4 Orders placed face to face and over the telephone count as unqualified acceptance of our quotation, unless the order confirmation states something to the contrary.

## **3. Prices**

- 3.1 Prices on delivery are calculated on the basis of the date and content of the quotation. Cost increases superseding that basis (such as increases in the prices of materials or labour, or changes in specifications and so on) entitle the Vendor to raise its prices accordingly. Prices and deliveries are ex-works Graz (in accordance with INOCTERMS 2000 in their current version at the time concerned), exclusive of packaging and Value Added Tax. All parts delivered to the Vendor for the purposes of processing must be despatched to it carriage paid in robust transportation boxes that can be used for returning them.
- 3.2 Items of packaging, such as boxes, that arrive damaged will be repaired or replaced by the Vendor at the Purchaser's cost. Packaging material made available by the Vendor will not be taken back.
- 3.3 The Vendor is only liable for damage to or loss of packaging materials in the event of some gross negligence imputable to it. Compensation in damages is in any case restricted to the level of the value of replacement packaging.
- 3.4 Part deliveries are permissible and must be paid for by the Purchaser on a pro rate basis.
- 3.5 Our list prices and/or quoted prices apply without any discounts in the cases of delay in payment and provision of additional supplies.

- 3.6 If, in the course of delivering goods or performing services, expenses or idle periods arise for which we are not responsible, then separate payments must be made for such expenses or periods.
- 3.7 Our quotations and cost proposals are basically without obligation and are not legally binding, nor is their accuracy guaranteed. An appropriate payment must be made for them if especial effort or expense has been involved in working them out.
- 3.8 Dimensions and measurements in our quotations are basically not binding, invoices being raised on actual measurements of work done on site. Flat-rates are increased proportionately if the dimensions on which they were based are exceeded.

#### **4. Payment**

- 4.1 In the absence of any explicit agreement to the contrary all payments must be made to the Vendor within 14 days of invoice date without any deduction.

The Purchaser makes an advance payment of 50% of the order amount within 10 working days of the contract coming into force, unless some other payment conditions were agreed. We have the right to delay the start of our performance until the advance payment has been received.

- 4.2 The Purchaser is in arrears if it takes more than the time allowed for any payment, even without having been reminded to make it, and any possible claims against the Purchaser that are not due at that point in time become due for payment immediately without any deduction.
- 4.3 Claims on the Purchaser become, moreover, due for immediate payment without any deduction if an application is made to initiate bankruptcy or court composition proceedings on the Purchaser's assets, if the Purchaser approaches its creditors on account of some out of court settlement, or if other circumstances, substantiating doubt on the Purchaser's ability or willingness to pay, come to Vendor's knowledge. In such cases the Vendor even has the right to withdraw from current contracts with the Purchaser or to demand immediate payment of the purchase price in cash or by cash prior to delivery.
- 4.4 The Purchaser must, in the case of due dates for payments having been missed – irrespective of all other rights to which the Vendor is entitled on account of the delay – pay interest for late payment at the statutory level and the Vendor's expenses in sending reminders. The dilatory Purchaser must, furthermore, bear the costs of reminding, of collecting (whether by cash or cheque) and of obtaining information that the Vendor incurs in connection with the recovery of invoice amounts outstanding.

- 4.5 The Purchaser has no right of retention, or to make any kind of set-off. The Purchaser may not, in particular, refuse to pay the purchase price or delay paying it on account of any complaints about defects that may have been raised.
- 4.6 The Vendor has the right to delay delivery of any goods that have been purchased from it until such time as the Purchaser has fulfilled completely all its obligations to the Vendor that were due at the time of the agreed delivery.

In the case of delay in payment or disputes on compensation we may discontinue work, in which case the periods of time agreed for the execution of the work concerned no longer apply.

- 4.7 The Vendor's employees and representatives only have the right to accept payments if they are in possession of a power of attorney covering collection. The Vendor only accepts cheques and bills of exchange on account of payment and on the basis of special agreements. All costs of bills of exchange and of cheques, fees, and discount charges and so on are borne by the Purchaser. The Vendor assumes no responsibility for the timely presentation or protesting in the case of bills of exchange that have come in.
- 4.8 The day on which the Vendor may dispose of the money counts as the day of payment. No payment of interest is made on payments made in advance or on account. Any cash discounts and allowances that have been agreed are completely lost in the case even of partial delay in payment.

## **5. Delivery**

- 5.1 Delivery and despatch of goods is always made for the Purchaser's account and at its risk from the Vendor's manufacturing site. The risk of loss therefore passes ex works at the same time. The place of delivery is the manufacturing site of the goods and/or the delivery warehouse of the Vendor. In the absence of any special agreement it is the Vendor that lays down the form of despatch, to the exclusion of any liability.
- 5.2 The Vendor will use its best endeavours to prepare the goods for transport and pack them in such a way that no transportation damage arises, but does not assume any liability to do so. The goods are only insured if the Purchaser expressly wishes that, and the Vendor will use its best endeavours to follow the Purchaser's instructions in this respect as well as possible, but any responsibility for this on the part of the Vendor is excluded by consensual agreement between it and the Purchaser.
- 5.3 Delivery times and times for service performance are made known to the Purchaser as precisely as possible in accordance with the actual circumstances, and the Vendor will use its best endeavours to comply with such times. In the

absence of any special agreement all delivery times begin running when the contract comes into force or, in the event of differences of opinion arising on the manner of execution, at the moment when final, consensual clarification of the matter is achieved.

All periods of time promised by us are subject to a tolerance of 14 working days.

- 5.4 The Vendor is not obliged to pay the Purchaser any compensation in damages on account of delivery dates being missed and of delays in the supply of goods. The Vendor is, in particular, not responsible for agreed delivery times being missed and for delays caused by events on which it has no influence, especially by instances of force majeure and/or unforeseen occurrences (such as disturbances to factory or transportation operations, fire, floods, workforce problems, shortages of energy or raw materials, strikes, lock-outs, official measures and so on) either in the manufacture or procurement of goods, or affecting its suppliers and sub-suppliers etc. Such occurrences affecting the Vendor itself or third parties with which it has business relationships release it from its obligation to deliver on time, and furthermore give it the right to discontinue further deliveries without granting any compensation in damages.
- 5.5 Warehousing costs: semi-finished goods and services will be warehoused at the risk and cost of the Purchaser in cases of delays in payment or acceptance.
- 5.6 The Purchaser notes that, given the current state of technology, the appearance of material and process faults cannot be wholly excluded. Such faults can remain undiscovered despite the application of agreed checking and quality assurance measures, and we are not responsible for them. Neither is it possible to take into consideration all the effects that materials and processes may have on each other, nor the appearance of ageing and corrosion. It is therefore recommended that sufficient insurance cover be taken out against leaks and the damage that may result from these factors, and especially against shortfalls in production and damage arising from penetrating processes.
- 5.7 Documentation of all kinds (for quality management or for the purposes of tracing materials, certificates of origin) is only supplied if that is expressly agreed. Brochures: our brochures may only be used for the customer's own advertising purposes with our written consent. Unless something else has been agreed in writing, we assume no duties under the "BauKG", are not liable for contract penalties and give no guarantees.

## **6. Complaints/defects**

- 6.1 Complaints in respect of the quality of goods and rebukes on account of the delivery of goods other than those ordered must be made in writing, giving precise details of the type and extent of the faults and the invoice number. Such complaints and rebukes must be accompanied by samples.
- 6.2 The goods must be examined at the very moment when risk in them is passed over. Complaints must reach us within 3 days, and in the case of defects that are

hidden, within 3 days of their being discovered. The goods shall count as having been taken over in perfect condition after the above-mentioned times allowed have expired. Transport damage must be recorded immediately in a suitable way, and in addition complaints of it must be made to the shipper in writing.

The basic assumption will be that our goods were free of defects at the time risk in them was passed over.

- 6.3 If changes to the goods are made without the Vendor's knowledge and consent, then the Purchaser's claims under guarantee and for compensation in damages are ruled out.
- 6.4 A testing agency appointed by the Vendor, or its delivery plant concerned, has the duty of establishing the justification of complaints made in good time.
- 6.5 In the event of justification of a complaint being established, the Vendor is obliged – to the exclusion of all the Purchaser's claims going beyond that – at its option either to make a replacement delivery or to grant credit for the goods complained about, but in each case only step by step in line with return of the goods complained about.
- 6.6 In the case of goods and parts of goods that were not produced by the Vendor, its guarantee obligation is limited to the assignment of all rights to which it is entitled vis-à-vis the manufacturer of those goods.
- 6.7 All the Purchaser's possible claims on the Vendor are ruled out if and for as long as the former has failed to comply with its payment obligations fully and punctually.
- 6.8 Each and every claim by the Purchaser under guarantee presupposes furthermore, that it has warehoused the goods properly and used them for the purpose for which they were intended, and in each case that it has heeded all the instructions on warehousing, maintenance and use of the goods that may have been issued by the Vendor.
- 6.9 If any goods or services have been produced or provided by the Vendor on the basis of the Purchaser's construction details, drawings or models, then the Vendor's liability does not extend to the accuracy of the construction but only to the fact that its execution was in line with the details the Purchaser provided. The Purchaser must, in such cases, indemnify the Vendor against any possible infringement of industrial property rights and ensure that no action is brought against it in that respect.
- 6.10 If the Vendor undertakes orders to repair goods, or in the case of changes being made to old goods and goods manufactured elsewhere or such goods being reconstructed, or in the case of used goods having been delivered, any guarantee

and liability on the part of the Vendor for the quality of the goods is ruled out.

- 6.11 The Vendor reserves the right, in the case of any complaint, to inspect the goods at the Purchaser's factory. If the Vendor so requests, the goods must be sent back to it carriage paid.

The Purchaser waives claims for recourse under § 933 b of the Austrian Civil Code, while §§ 377 and 378 of the Austrian Commercial Code shall apply to work that has been carried out by us. Starting to use goods counts as having accepted them.

- 6.12 The statutory period of limitation for claims for compensation in damages in the case of concealed defects is 5 years from delivery, and fault on our part is not presupposed.

## **7. Extent of liability/Duty to insure**

- 7.1 The Vendor is not liable for pecuniary loss, damage as a result of penetrating processes, for loss of profit and production shortfalls caused by delayed or imperfect delivery or services, and never in the case of negligence that is merely minor. Liability is furthermore excluded for disadvantages ensuing because of plant interruptions caused by us that arise in connection with the exchange of defective for perfect goods, for any possible development or installation costs, for damage to objects in the course of taking care of them or processing them when they are at the Vendor's premises for processing, and for any claims against the Purchaser that are made by its customers.
- 7.2 Irrespective of the way in which the guarantee obligation is fulfilled, and irrespective of what claims are asserted, on whatever legal basis, by the Purchaser against the Vendor, the latter is in all cases liable only up to the level of the invoice value of the product concerned. The Vendor is, however, liable neither for indirect damage nor for consequential damage.

The Purchaser shall ensure that the items delivered or manufactured by us, and its plant facilities, are adequately insured in the normal way against pipeline and breakdown damage, and shall obtain a waiver of subrogation from the insurer in our favour (cross liability). The Purchaser renounces towards the Vendor each and every claim for reimbursement that might be asserted against any such comprehensive insurance.

- 7.3 The Vendor's compensation in damages obligations vis-à-vis the Purchaser's customers are ruled out in the same degree as those vis-à-vis the Purchaser. The Purchaser is, moreover, obliged in the case of any onward disposal, to restrict any claims for reimbursement by its customers that might exist in a corresponding way.



## **8. Retention of title/Handing back**

- 8.1 All goods delivered by the Vendor shall remain its property until the purchase price, including all ancillary charges, has been paid in full. The Purchaser counts as a trustee custodian of goods sold subject to retention of title until expiry of that title.
- 8.2 No pledging, transfer of ownership by way of security or other charging of goods sold subject to retention of title is permissible for the duration of the Vendor's retention of title. Any attempted seizure of goods sold subject to retention of title must be reported to the Vendor immediately for the purposes of intervention.
- 8.3 The provisions on the point in time of the passage of risk contained in these General Terms and Conditions of Business or in whatever laws may be applicable in each case are not changed by the retention of title that has been agreed.
- 8.4 The Vendor has the right to demand the immediate return of goods that have been delivered but not completely paid for, if the Purchaser is not complying with its payment obligations to the Vendor in good time or in full, if an application is made to open bankruptcy or court composition proceedings on the Purchaser's assets, if the Purchaser has actually discontinued its payments, or if the Purchaser approaches its creditors on account of some out-of-court settlement. The costs arising for the Vendor as a result of asserting its rights arising from its retention of ownership shall be debited to the Purchaser.
- 8.5 The taking back of the goods by the Vendor shall not count as withdrawal from the contract. The Vendor's right to demand compensation in damages on account of non-fulfilment continues to exist in the case of goods that were sold subject to the retention of ownership being taken back.
- 8.6 Extended retention of ownership: in the case of onward disposal, the Purchaser shall offer to assign his claim on his customers to us. This offer shall apply until all its liabilities to us have been paid. We then have the right to notify the customer's principal of this assignment, as a result of which the latter may only pay us with debt-discharging effect. In the case of deliveries currently invoiced the retention of ownership serves to secure all our balance claims. The customer undertakes to provide us with all the information needed to assert the assigned claims against its customer, and to pass over the corresponding documentation. We have the right to mark the goods over which our ownership is retained as such. In the case of a delay in payment of more than 30 days, or of the opening of insolvency proceedings on the customer's assets, or discontinuation of payment we have the right to collect the goods and realise their value. The Purchaser waives its possession and any action for trespass in the face of execution measures. Our claims and expenses (transport and handling costs) are covered by the proceeds of realising the value of the goods, with the balance being credited to the customer.

## **9. Product liability**

- 9.1 Each and every product sold by the Vendor offers just whatever surety may be expected on the basis of the rules governing its certification, the instructions for its use and other requirements of the Vendor or producer.
- 9.2 The Purchaser undertakes to inform the Vendor of any possible claims by aggrieved parties immediately, in writing and in detail. This obligation on the Purchaser must, in the case of onward disposal to other enterprises, be imposed on them also. The same applies to the Purchaser's duty to report to the Vendor product faults within the meaning of the law on product liability.
- 9.3 The Vendor explicitly states the exclusion of effective protection for the benefit of third parties.

## **10. Place of fulfilment, jurisdiction, applicable law etc.**

- 10.1 Graz is the place of fulfilment for delivery and payment, and for all the Purchaser's obligations to the Vendor.
- 10.2 Each agreement between the contracting parties under these General Terms and Conditions of Business and these General Terms and Conditions of Business themselves are subject in every respect to the laws of the Republic of Austria, with the exception of the conflict-of-laws rule of Austrian law, and to the exclusion of the UN 1980 Convention on Purchasing Rights.
- 10.3 The geographical responsibility of whatever court in Graz is competent for the matter concerned is agreed for all legal disputes that may arise from or in connection with business transactions subject to these General Terms and Conditions of Business, providing the Purchaser has its legal domicile or at least a branch in Austria – otherwise all such disputes will be decided, with finality, in accordance with the arbitrating and mediating procedures of the International Arbitration Court of the Austrian Chamber of Commerce in Vienna (Viennese Rules) by one or more arbitrators nominated under those rules.

The Vendor submits itself expressly and unconditionally to this arbitration clause. Vienna is the arbitration location, and German is the language of the arbitration proceedings. In so far as it is legally permissible to do so, the Vendor and the Purchaser renounce any challenge to the arbitration award.

- 10.4 If any of the preceding clauses is wholly or partially void, then it must be replaced by whatever admissible provision comes closest to meeting the discernible purpose of that clause in practical and economic terms.

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