

General Terms of Business ("GTB")

of the SMB group:

SMB Holding GmbH

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FN 519639a

SMB Industrieanlagenbau GmbH

AT-8075 Hart bei Graz, Gewerbepark 25
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SMB Pure Systems GmbH

AT-9400 Wolfsberg, Alois-Huth-Straße 7
FN 387865s

SMB Pure Media GmbH

AT-9500 Villach, Handwerksstraße 24
FN 381828m

SMB Bilek + Schüll GmbH

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SMB Service GmbH

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SMB Industrieservice GmbH

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SMB Manufacturing s.r.o.

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SMB Construction Service s.r.o.

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IČO 50 712 811

SMB Pure Systems Kft.

HU-2142 Nagytarcsa, Asbóth Oszkár u. 4. A/1
Cg. 13-09-204756

SMB Process Automation Kft.

HU-2142 Nagytarcsa, Asbóth Oszkár u. 4. A/1
Cg. 13-09-228040

1. Scope of application

- 1.1. Deliveries and services that companies in the SMB group ("SMB") provide to entrepreneurial customers ("Customers") are governed exclusively by the following General Terms Of Business ("GTB") in the version that was valid when the contract was entered into; that version is available on our homepage under <https://www.smb.at>.
- 1.2. These GTB do not apply to consumers as defined by the Austrian Act on Consumer Protection ("Konsumentenschutzgesetz").
- 1.3. A "consumer" means an individual who enters into a legal transaction for purposes that cannot mostly be attributed to their commercial or independent professional activity. An "entrepreneur" means an individual, a legal entity, or a partnership having legal capacity that enters into legal transactions in exercise of their commercial or independent professional activity.
- 1.4. Unless these GTB or other contract provisions regulate otherwise, the relevant professional standards apply in the version that was valid when the contract was entered

into, including without limitation the Ö-Norms (Austrian standards) B2110 and B2118 (building contract standards). The application of standards other than those requires SMB's express written consent.

- 1.5. These GTB also apply to future transactions with SMB's Customers even if they are not referred to again. Other conditions are invalid. Differing, opposing, previous, restricting, or supplementary terms of business and regulations of the Customer may become a contract component only if SMB expressly consents to them in writing.
- 1.6. If SMB receives the Customer's terms of business and does not expressly object to them, this will not be deemed consent. To be clear: actions that SMB takes to perform a contract are not deemed consent to any conditions that deviate from these GTB.

2. Offer / Contract formation

- 2.1. Offers containing no acceptance period (period of validity) are subject to change and are non-binding.
- 2.2. Assignments are made exclusively through written orders. A contract is deemed formed only when a written order confirmation and its attachments are sent, or if SMB accepts the deliveries or services.
- 2.3. Promises, assurances, and guarantees given by SMB; or agreements connected with contract formation; that deviate from these GTB will not be binding unless SMB confirms them in writing.

3. Prices / Payment conditions

- 3.1. Prices are calculated based on the offer date, the offer content, and the information given by the Customer. If the information given by the Customer proves to be incorrect, incomplete, or deficient during order execution, SMB may adjust the prices.
- 3.2. SMB may adjust the prices if wage costs change due to a law, regulation, collective agreement, or works agreement; or if other cost factors change that are necessary for rendering services, such as costs for materials, energy, transport, outside services, or financing; after the contract is entered into.
- 3.3. If performance deviations occur, SMB may set new prices, regardless of the form in which the fees are set. This applies to service changes based on the Customer's instructions and to disruptions of performance.
- 3.4. SMB's prices do not include additional costs incurred for night, holiday, or weekend work and the Customer shall pay those costs separately.
- 3.5. All prices are shown in euros and do not include applicable VAT or any fees, charges, or contributions. The prices for deliveries apply "ex works" from SMB's respective company (INCOTERMS 2020 as amended), not including packaging.
- 3.6. Unless otherwise agreed, 50% of the fee is due when the contract is entered into.
- 3.7. Unless otherwise agreed, invoices are due in full within 14 calendar days. The payment is deemed to have been made when the entire

due amount is credited to the account specified on the invoice.

- 3.8. SMB is not required to give a discount unless this has been expressly agreed in writing.
- 3.9. SMB is not required to accept payment references the Customer makes to bank transfer receipts.
- 3.10. If the payment period is exceeded, SMB may make all claims arising from the ongoing business relationship with the Customer due without prior warning. If SMB does so, any remuneration granted (rebates, discounts, and the like) will be forfeited and allocated to the invoice.
- 3.11. If payment is late, 10% interest per annum will be charged. This will not affect SMB's other claims.
- 3.12. If the Customer defaults (even due to a late payment for which it is not to blame) it shall reimburse SMB for the dunning and collection expenses incurred, provided those expenses are necessary for taking appropriate legal action and reasonable in proportion to the claim.
- 3.13. If payment is late, SMB may make performance of outstanding deliveries and services contingent on prepayment or provision of security or may withdraw from the contract. Moreover, all outstanding claims will be due for immediate payment. The same applies if after entering into the contract SMB learns of circumstances that significantly reduce the Customer's creditworthiness: especially if debt enforcement measures are taken, or insolvency proceedings initiated, against the Customer's assets.
- 3.14. The Customer shall not set off its claims against SMB's claims (prohibition of setoff) unless the Customer's claims have been acknowledged in writing by SMB or finally adjudicated.
- 3.15. Payments received will first be allocated to the oldest outstanding claim. If an order is awarded to multiple people together, they shall be jointly and severally liable for the outstanding claim.

4. Performance / Delivery

- 4.1. The scope of the deliveries and services is determined exclusively by SMB's order confirmation or, if there is no order confirmation because the order or service is executed immediately, by the content of the delivery note, invoice, or both.
- 4.2. Side agreements and amendments must be confirmed in writing by SMB. Any objectively justifiable but minimal changes to our rendering of services that are acceptable to the Customer are deemed as approved in advance.
- 4.3. Unless otherwise agreed in writing, SMB assumes no obligations under the Austrian Law on Coordinating Construction Work (*Bauarbeitenkoordinationsgesetz, BauKG*), is not liable for contract penalties, and gives no guarantees.
- 4.4. SMB is not required to render services until the Customer has created all the construction-related, technical, and legal conditions for performance that were set forth in the contract, or in information disclosed to the Customer before contract formation, or which the Customer should know based on relevant expert knowledge or experience. Those conditions include without limitation regulatory

approvals, authorizations, inspections, and entering into an agreement with a non-party (meaning any entity who is not a party to this contract).

- 4.5. The Customer shall notify SMB promptly, completely, and thoroughly of all circumstances that make rendering services more difficult or impossible. The Customer is responsible for the necessary construction-related, technical, and legal conditions being met, and for all consequences based on false or incomplete information.
- 4.6. The Customer shall cooperate as necessary for SMB to render the service and shall promptly take the precautions necessary for SMB to render services continually.
- 4.7. If the beginning of the performance, or the performance itself, is delayed or interrupted by circumstances attributable to the Customer (especially breach of the Customer's aforementioned obligations to cooperate), service periods will be prolonged accordingly, the agreed completion deadline will be postponed, and the Customer shall be liable for any expenses or additional costs that SMB incurs thereby.
- 4.8. SMB is not required to comply with delivery and performance deadlines unless that compliance was promised to the Customer in writing.
- 4.9. If the ordered goods are not immediately deliverable in their entirety, SMB shall immediately deliver the parts that are immediately deliverable (after consulting with the Customer) and shall deliver additional parts later, when they become available. SMB may execute partial deliveries and services and invoice them separately if this is objectively justifiable.
- 4.10. The risk will be transferred to the Customer as soon as SMB has the goods ready to be picked up, or delivers them, or hands them over to a transport company. The Customer shall take out adequate insurance against that risk. SMB shall take out transport insurance at the Customer's express written request, at the Customer's risk. The Customer hereby approves every customary shipping method.
- 4.11. If force majeure events or breakdowns occur, including strikes, lockouts, and other events that make it more difficult for SMB or its suppliers to render services or delivery, including without limitation difficulties in material procurement, SMB may (1) extend the service or delivery period according to the impairment by notifying the Customer without undue delay or (2) withdraw from the contract. SMB is not required to bear responsibility for those circumstances even if they occur during an existing delay.
- 4.12. If the service or delivery is delayed, and a reasonable grace period is then set in writing and expressly designated as such, yet expires to no avail, the Customer may withdraw from the contract. Withdrawal must be declared in writing to be effective. The Customer may claim damages in addition to exercising its right of withdrawal only if SMB or its vicarious agents are guilty of intent or gross negligence.
- 4.13. SMB may use subcontractors at its discretion. The Customer may reject the use of a subcontractor only for important reasons that would justify withdrawing from the contract.
- 4.14. If the Customer defaults in acceptance (refuses to accept, defaults on preliminary services, or the like), SMB may store the goods at the Customer's expense and risk. The Customer shall bear all costs for return transport. This does not affect SMB's right to make due the fee for services rendered or costs incurred and to withdraw from

the contract if that fee is not paid within a reasonable grace period.

5. Retention of title

- 5.1. The materials SMB delivers remain its property until all claims arising from an ongoing business relationship are completely settled. The Customer may not dispose of the goods subject to retention of title until all of SMB's claims are satisfied.
- 5.2. The Customer may resell those goods only if the Customer notifies SMB of the resale promptly in advance while specifying the buyer's name (or company name) and exact address (or business address) and SMB consents to the resale in writing. If SMB consents, the purchase price claim will then be deemed assigned to SMB, and the Customer shall note that assignment in its books and on its invoices and notify its debtors thereof, until the fee or purchase price is paid in full. On request, the Customer shall give SMB all the documents and information SMB needs to assert the assigned receivables and claims.
- 5.3. The Customer shall treat with care all goods subject to retention of title as long as that title is retained. The Customer shall notify SMB without undue delay if nonparties lay claim to the delivered materials, including without limitation through enforcement measures, initiating insolvency proceedings, and damaging or destroying the materials. If the Customer culpably breaches those obligations it shall reimburse SMB for all damage and costs, including necessary and reasonable costs for taking appropriate legal action.
- 5.4. If the Customer defaults in payment, SMB may demand the goods subject to retention of title and pick them up or dismantle them appropriately at the Customer's expense. The same applies if after entering into the contract SMB learns of circumstances that significantly reduce the Customer's creditworthiness: especially if debt enforcement measures are taken, or insolvency proceedings initiated against the Customer's assets.
- 5.5. The Customer acknowledges that SMB or SMB's employees may enter the location of the goods subject to retention of title to enforce the retained ownership.
- 5.6. An enforcement of the retention of title will be deemed withdrawal from the contract only if that withdrawal is expressly declared.

6. Warranty / Liability

- 6.1. The warranty period for services and deliveries performed by SMB is one year from delivery or handover. The Customer shall bear the burden of proving that the defect already existed on the handover date.
- 6.2. Unless otherwise agreed, the "handover date" means the date of completion or delivery, but at the latest when the Customer takes over the service or materials into its control or refuses acceptance without providing grounds.

If a joint handover is envisaged and the Customer fails to appear on the handover date that was communicated to the Customer, the handover is deemed to have occurred on that date.

- 6.3. The Customer shall inspect the service or delivery without undue delay after handover and, if a defect is discovered, give SMB written notice of that defect without undue delay (but at the latest within 7 working days); the notification must describe the defect as precisely as possible and indicate its possible causes. Notices of hidden defects must be sent without undue delay after they are discovered. If a notice of defect is not given on time or at all, the service or delivery is deemed accepted. In those cases, the Customer shall not assert warranty claims or claims for damages or claim avoidance on account of mistake due to defects. Defective deliveries must be returned to SMB for testing. The Customer shall bear any transport and travel expenses incurred in connection with curing a defect.
- 6.4. If using or processing defective materials might threaten further damage or make troubleshooting more difficult or impossible, the Customer shall immediately stop using or processing them if this is feasible.
- 6.5. The Customer shall make the construction site or facility available to SMB without culpable delay, for curing defects, and shall grant SMB the opportunity to have the situation assessed by its own employees or an expert appointed by SMB.
- 6.6. Curing a defect claimed by the Customer does not constitute acknowledging that defect.
- 6.7. The Customer shall not claim defects based on insignificant deviations from the agreed services or qualities, insignificant impairment of usability, or natural wear and tear; or if the delivered materials match the order but are not suited for their intended purpose. The Customer shall not claim defects based on the service not being performed as agreed if that circumstance arose only because the Customer failed to comply with its obligation to cooperate and the actual circumstances when the service was rendered therefore deviated from the information SMB received. If the performance objects were manufactured based on information, drawings, plans, models, or other specifications of the Customer, SMB shall be liable only for performance according to those specifications. The warranty is excluded if the Customer's technical facilities are not in technically flawless and operational condition (due to supply lines or the like) or not compatible with the delivered materials or components, provided this circumstance is causal for the defect. Moreover, the Customer shall not claim defects attributable to repair work or changes performed by the Customer or non-parties.
- 6.8. If the Customer's defect claims are unfounded, the Customer shall reimburse SMB for the expenses incurred for determining that there is no defect or for troubleshooting.
- 6.9. The Customer acknowledges that, according to the current state of technology, the appearance of material defects or processing defects cannot be entirely ruled out. Even after the agreed inspection and

quality assurance measures are applied, such defects might remain undetected and lead to damage for which SMB is not liable. It is also impossible to consider all interactions between materials and media, and appearances of aging and corrosion. Therefore, we recommend taking out adequate insurance policies against leaks and resultant damage, particularly (but not exclusively) production downtime and damage through leaking media.

- 6.10. SMB shall provide the product characteristics that the Customer can expect regarding the registration provisions, operating instructions, and other product-related manuals and instructions (especially monitoring and maintenance) of SMB, non-party manufacturers, or importers, considering the Customer's knowledge and experience. As a reseller, the Customer shall take out adequate insurance policies for product liability claims and indemnify and hold SMB harmless regarding recourse claims.
- 6.11. SMB shall be liable only for damage in the event of intent and gross negligence. This does not apply to personal injury. The injured entity must bear the burden of proving the gross negligence. Compensation for consequential damages (caused by defects), as well as other material damage, financial losses, and non-party damage against the Customer is excluded.
- 6.12. SMB is not liable for damage caused by improper handling or storage; excessive use; failure to follow operating and installation requirements; faulty assembly, commissioning, or maintenance; repair by the Customer or non-parties not authorised by SMB; or natural wear and tear; provided that event was causal for the damage. Neither will SMB be liable for the omission of necessary maintenance unless SMB is obligated to such maintenance under a contract.
- 6.13. SMB is not liable for claims asserted against its employees, representatives, or vicarious agents based on damage that those employees, representatives, or vicarious agents caused the Customer, regardless of any contract that those employees, representatives, or vicarious agents entered into with the Customer.
- 6.14. SMB's liability is limited to the maximum liability amount of any liability insurance it takes out. That restriction also applies to damage to an item that SMB has taken on for processing.
- 6.15. Damage compensation claims must be asserted before a court within two years or they will expire.

7. Intellectual property / Non-party proprietary rights

- 7.1. Delivery objects and execution documents, plans, sketches, cost estimates, and other documents in this regard that are provided by SMB or arose through a contribution of SMB remain SMB's intellectual property.
- 7.2. Those documents may not be used other than as intended, and especially may not be forwarded, duplicated (even in part), published, or made available, without SMB's express consent.

- 7.3. The Customer shall not disclose to non-parties any knowledge it gains from the business relationship.
- 7.4. If SMB manufactures delivery objects or performs services in accordance with Customer documents (construction information, drawings, models, other specifications, etc.), only the Customer shall assume the risk of the manufacture or performance infringing on non-party proprietary rights.
- 7.5. If non-party proprietary rights are asserted anyway, SMB may stop manufacturing the delivery objects or rendering the service, at the Customer's risk, until the non-party rights are cleared up, unless those claims are obviously unjustified.
- 7.6. To that extent, the Customer shall indemnify and hold SMB harmless and shall assume all necessary and useful costs that SMB incurs for defending against such claims.

8. Final provisions

- 8.1. All legal explanations, amendments, supplements, side agreements, etc. regarding this contract and the transactions associated with it must be in writing to be valid. Any deviation from compliance with this provision regarding form must also be in writing.
- 8.2. If the Customer's name, company name, address, legal structure, or other relevant information changes, the Customer shall notify SMB thereof in writing without undue delay.
- 8.3. Finding individual provisions of these terms of business to be invalid or legally ineffective will not invalidate its other provisions. Unreasonable provisions must be maintained with the part of their content that can be removed from the unreasonable overall regulation as an independent component. Any invalid or ineffective provision must be replaced by a provision that comes closest to its economic purpose. The same must be done if loopholes are found.
- 8.4. Austrian substantive law applies. The United Nations Convention on Contracts for the International Sale of Goods and all provisions relating to it are expressly excluded.
- 8.5. The place of performance is the location of SMB's respective company. The competent court for settling all disputes arising from the contract relationship or future contracts between us and the Customer is Graz.