

## General terms and conditions

of SMC Austria GmbH, A-2100 Korneuburg, Girakstrasse 8, FN61518v

SMC intends to achieve an optimal partnership with the customer. In case of disagreements or dissent SMC will always try to find a fair solution. To avoid problems this general terms and conditions shall apply for all legal transactions with commercial clients. The United Nations' Convention on the International Sale of Goods of 11. 4. 1980, BGBl. 1988/96 shall not apply and is herewith explicitly excluded.

### 1. Scope

- 1.1 This general terms and conditions are valid for all deliveries of goods and correspondingly for the performance of services. As far as individual stipulations are made they shall prevail.
- 1.2 Any changes and/or amendments to this general terms and conditions shall only be valid with SMC's written approval.
- 1.3 For installation work the general terms and conditions for installation work of the Austrian Fachverband der Maschinen- und Stahlbauindustrie (association of the machine- and steel construction industry) shall apply.

### 2. Product use

- 2.1 SMC products are principally designed and intended for the use in industrial automated systems.
- 2.2 Any arrangement or use of SMC products outside of SMC's intended use requires a written request and shall only be valid with SMC's written approval.
- 2.3 If the client uses or orders the use of SMC-products for purposes not predetermined or approved by SMC, SMC shall not be liable for any damages resulting therefrom and the client shall be liable, indemnify and hold SMC harmless for any resulting claims. The client bears the burden of proof that SMC has predetermined or approved the area of application.

### 3. Offer

- 3.1 If not otherwise specified, SMC's offers are not binding.
- 3.2 The data specified in catalogues, prospectus etc. are only relevant if it is explicitly referred to such data in SMC's offer and in SMC's order confirmation.
- 3.3 All offer- and project documents remain the intellectual property of SMC and may not be reproduced or made accessible to third parties without the explicit consent of SMC. These documents can be claimed back at any time and are to be returned immediately if the order is placed at another company.

### 4. Conclusion of the agreement

- 4.1 The contract comes into effect once SMC has sent a written order confirmation after reception of the order and this written order confirmation is not provably rejected within the following 10 days.
- 4.2 Subsequent changes and amendments of the contract only become valid with SMC's written confirmation. The customer's terms and conditions shall only become binding for SMC if such terms are separately accepted by SMC in writing.
- 4.3 In case of cancellation of an order SMC is entitled to charge the customer with a cancellation fee of 20% of the contract value or in case of provable higher costs SMC is entitled to charge the effectively incurred costs of the whole project.

### 5. Prices

- 5.1 In case of doubt the quoted prices shall be valid in EURO for declared, unpackaged goods ex SMC's warehouse excluding shipping, transport, insurance and value added tax.
- 5.2 In case of a divergence of the individual order from the total offer SMC reserves the right to adjust the price accordingly. Especially in case of an individual order which is grossly lower than the respective frame-order SMC is also entitled to adapt the prices retroactively. Optionally SMC can insist on fulfillment.
- 5.3 In case of repair orders the services regarded as necessary and/or appropriate by SMC shall be performed and shall be charged according to the latest hourly rates and expense rates. The same applies to performances and additional services which appear to be necessary and/or appropriate during the execution of the order; in this case SMC is not obliged to inform the customer about this fact. Standby times in connection with repair work on site will be charged accordingly.

## 6. Delivery term

- 6.1 Unless agreed otherwise the delivery term ex SMC warehouse (dispatching date) begins at the latest of the following moments:
  - A) dispatching date mentioned on the order confirmation,
  - B) the date of fulfilling of all of the agreed client's technical, commercial and financial obligations and/or requirements,
  - C) in case of any delivery delay of SMC's sub-suppliers the date mentioned on a written notification.
- 6.2 SMC has got the right to effect part and preterm deliveries.
- 6.3 In case of any delivery delay caused by any circumstance on SMC's side which represents a reason for legal relief in the sense of art. 14., an appropriate extension of the delivery term shall be granted. If the client is in default of acceptance SMC can either claim fulfillment or cancel the purchase contract in parts or completely and may in any cases demand compensation.
- 6.4 In case of delayed payment SMC has the right to suspend or retain deliveries according to point 10.4.

## 7. Shipping

- 7.1 Shipping is made according to the best of SMC's judgment as long as the client has not expressed any special wishes. If goods ready for shipment have to be stored at SMC due to reasons which don't form any fault of SMC, especially if the customer is in delay of acceptance or in delay of payment (also regarding other business transactions), SMC is entitled to charge the customer a monthly fee of 5% of the invoice amount for storage and insurance costs. Beyond that, the goods are stored at the customer's risk.
- 7.2 On arrival of the shipment the client has to examine carefully the product's completeness of contents as well as its physical intactness. Possible damages or deficiencies have to be claimed immediately to the carrier and to SMC. Possible defects which do not prevent from using the delivered goods do not entitle the customer to postpone or refuse their acceptance.

## 8. Fulfillment and transfer of risk

- 8.1 Unless otherwise agreed, the goods are sold "ex works" (EXW) (readiness to be picked up).
- 8.2 Furthermore, the INCOTERMS shall be applied in their actual version of the date of the contract.
- 8.3 For services that are not part of the delivery, the place of fulfillment is the place of execution of the performance. The risk of a service or an agreed partial service is transferred to the client after the service has been performed.
- 8.4 In case a delivery is dispatched in delay due to the client's fault from SMC's warehouse, the risk is transferred to the client on the day the goods are ready for delivery.  
In case delivery on call is agreed and SMC insists on fulfilling the contract, the goods shall be considered as called by one year after the placement of the order at the latest.  
All terms dependent on the fulfillment of the seller shall commence to run from the aforesaid dates.

## 9. Returns of deliveries

- 9.1 In the case of returned goods SMC is entitled to – after proper examination of the corresponding contract or transaction – the right to charge handling fees or handling costs at a maximum of 20% of the sales price – at least € 30,00 – for restocking. Goods lacking their original packaging and goods which have been purchased or adapted according to customer specification are excluded from any kind of return.

## 10. Payment

- 10.1 Unless agreed otherwise SMC's invoices are payable within 10 days from the date of invoice less 2% cash discount, or within 30 days from the date of invoice at their net amount. A possible acceptance of checks or bills of exchange shall only take place under the condition of the effective receipt of payment. All expenses in connection therewith have to be borne by the customer (such as collection and discount charges).
- 10.2 The client is not entitled to withhold or offset payments because of warranty claims or any other counterclaims which are not accepted by SMC.
- 10.3 A payment is considered paid on the day the money is at SMC's disposal.
- 10.4 If the customer is in delay or default with an agreed payment or other service, SMC shall be allowed, according to SMC's judgement, to
  - a) refrain – in addition to all other legal consequences – from any further deliveries or services, even if those supplies or services are not connected to the deliveries or services that are

affected from the delay of payment, until all of the purchaser's total liabilities arising from whatsoever legal title have been paid to SMC. Moreover, such a client's payment default entitles SMC to perform further deliveries or services only against prepayment or an adequate payment guarantee and/or to retain further deliveries or services until full payment of all open amounts. In addition, SMC is entitled to a reasonable extension of the term of delivery,

- b) declare the entire outstanding balance due for payment (date loss),
- c) charge interest of 8% above the base rate of the European Central Bank plus VAT starting at the maturity date; if SMC proves higher and/or further costs they shall be entitled to these costs, and/or
- d) cancel the contract after having granted an appropriate extension of time for the performance of the overdue amounts.

10.5 The client has to refund SMC the incurred dunning and collection costs as further damage caused by delay.

10.6 Granted discounts or bonuses become only valid after receipt of the complete payment.

## 11. Retention of ownership

11.1 SMC retains the sole property, ownership and title of all delivered goods until full payment of all amounts invoiced including any default interest and costs. Until that time, the client is only entitled by a written consent of SMC to sell the goods, to adapt respectively process or to unite the goods respectively to rent or lend the merchandise, except for those cases where the goods are determined for further resale, adaptation respectively processing. To secure payment of the purchase price the customer is obliged to assign his claims from the resale to SMC and to make a corresponding entry in his books or on his invoices. In case of attachment of a claim or other claims the client is obliged to refer to SMC's right of property and to inform SMC instantaneously thereof.

## 12. Warranty

12.1 The warranty period is 12 months from the date of risk transfer. This also applies to delivery and service objects that are or become permanently connected to a building or land. The warranty period begins at the time of transfer of risk according to point 7 respectively subject to the place of fulfillment.

12.2 The warranty claim arises only if the client has informed SMC instantaneously about occurred defects in writing. In case of a defect subject to the seller's warranty SMC will, at its own decision, replace the defective goods/services respectively the defective parts or repair on the spot or send additional parts for improvement. The assumption rule according to § 924 of the Austrian Civil Code (ABGB) is excluded.

12.3 If SMC organizes the return shipment of the defective goods or parts for repair or replacement, the customer, unless otherwise agreed, takes the costs and risk of transportation. The return of the repaired or replaced goods or parts to the customer takes place, if it is not otherwise agreed, is at risk and expense of SMC. For warranty work in the customer's enterprise the necessary professionals (e.g. persons competent to give a ruling) and assistants, hoisting gear, scaffolding and incidentals etc. have to be provided by the customer free of charge according to the relevant regulations. Possible replaced parts become the property of SMC.

12.4 SMC is not liable for a product's defects that have been produced according to the client's construction specifications, drawings, models or other specifications of the client, in so far as these defects can be traced back to this information. Any possible further obligation of SMC to give notice of such defects is explicitly waived. In case of sale of used goods as well as in case of acceptance of repair orders or modifications or adaptations SMC does not assume any kind of liability.

12.5 Defects arising from assembly and arrangement contrary to the seller's advice, insufficient installation, non-compliance with installation necessities and conditions of use, overuse of the parts' performance as given by SMC, sloppy or incorrect handling or use of inappropriate material are excluded from any kind of warranty; this is also valid for defects resulting from material provided by the customer. Furthermore SMC is not liable for damages caused by third parties, by atmospheric discharges, overvoltage and chemical influences. The warranty does not include the replacement of parts subject to natural and regular wear.

12.6 Any warranty claim is immediately terminated if the customer or a third person, who is not explicitly authorized, makes changes or maintenance work concerning the delivered goods without a written authorization by SMC. Invoices arising hereof are not recognized. The initial warranty

period shall not be extended by warranty work and supplies.

12.7 From the beginning of the warranty period SMC does not bear any further liability other than defined in this article.

### **13. Liability, place of jurisdiction, place of fulfillment**

13.1 Outside the range of the product liability SMC is only liable for damages caused by willful misconduct or gross negligence. The liability for slight negligence is explicitly excluded as well as the reimbursement of secondary damages and financial losses, not earned savings, loss of interest and loss of damages caused by third parties' claims against the customer.

13.2 SMC is liable within the scope of the product liability law for personal injuries as well as damages incurring to consumers. Nor SMC neither SMC's sub-suppliers are liable for damages incurring to a businessman.

13.3 Each case of non-compliance with mounting- or assembly-conditions or instructions, implementing-instructions and/or other instructions (especially those stated in the instruction manual and/or SMC's written warnings) and/or of non-compliance with governmental or official regulations represents improper use and gross negligence. Any kind of liability of SMC for damages resulting from such a case is excluded and the customer will indemnify and hold harmless SMC against any third-party claims resulting from such a case.

13.4 The limitation of liability according to the above cited points have to be transferred to possible customers, this with the obligation of further transfer to their client.

13.5 The contract is exclusively governed by Austrian law excluding the regulations of the United Nations Convention on the International Sale of Goods dated 11/04/1980, BGBl. 1988/96, and excluding the regulations about the internationally applicable law. The exclusive place of jurisdiction for all disputes and/or claims is the court competent for the headquarters of SMC.

13.6 As far as delivery and payment are concerned the place of fulfillment is the headquarters of SMC, this also if the transfer is taking place at another agreed place.

### **14. Reasons for relief**

14.1 The parties are liberated from fulfillment of contract at time if acts of force majeure handicap the parties. Only incidents which are unpredictable and inevitable for the parties and do not arise from the parties' surroundings shall be considered as force majeure. Strike and industrial actions shall be considered as acts of force majeure. The customer handicapped by an act of force majeure can only plead force majeure after having informed the seller immediately, at latest within 5 days, about the beginning and probable ending of the handicap by a recommended statement which has to be confirmed by the respective governmental authority or chamber of commerce of the supplying country informing about the reason, the expected impact and the duration of the delay. In case of force majeure the parties have to make all possible efforts to remove or reduce the difficulties and predictable damages and they have to keep the other party informed about their activities. Otherwise they shall have to pay compensation to the opposite party. Terms and delays that cannot be respected because of acts of force majeure shall be at longest prolonged for the duration of the impact of force majeure or for a fixed period of time agreed upon by both parties. If an act of force majeure lasts for more than 4 weeks the customer and SMC shall try to find an agreement about further transaction by negotiation. If the parties cannot achieve a unanimous solution SMC is entitled to refrain from the entire contract or from parts of the contract.

### **15. Copyright and industrial property rights; data protection**

15.1 In case a product is manufactured by SMC according to a client's construction specification, drawings, models or other specification provided by the customer, the customer has to keep SMC free from damage in case of possible violation of property rights. Both parties agree upon absolute secrecy as far as the knowledge and know-how from such a business relationship is concerned.

### **16. Other**

Technical changes or changes of the price are reserved, such as printing errors.

### **17. Defense clause**

Other terms and conditions do not apply unless they have been expressly approved. The contractual terms and conditions of the contracting party do not become part of the contract insofar as they contradict the provisions made here or have not been expressly accepted.