

## **Salzgitter Maschinenbau AG (SMAG)**

### **General Terms and Conditions for the Supply of Goods and Services**

- for commercial business transactions only –

#### **1. Validity of Conditions**

1.1. SMAG will provide all supplies of goods, services, and offers exclusively on the basis of these General Terms and Conditions for the Supply of Goods and Services (hereinafter referred to as business terms and conditions) unless otherwise agreed in writing. They shall also apply to all future supplies of goods, services, or offers made to contractual partners of SMAG, even if they are not agreed again.

1.2. Conflicting conditions or conditions deviating from these business terms and conditions imposed by the Customer and/or purchasing conditions are hereby expressly objected.

1.3. These business terms and conditions only apply to companies in terms of §§ 310 sect. 1, 14 of the German Civil Code (BGB) referring to entrepreneurs, legal entities under public law, and special assets under public law.

#### **2. Offer and Conclusion of Contract**

2.1. The offers of SMAG are subject to change and non-binding unless they are expressly stated as binding or contain a definite term of acceptance.

2.2. Information, images, drawings, details regarding weights or dimensions as well as all other technical data together with references to German E, DIN, VDE standards or data contained in offers, catalogues, on data carriers, in electronic media and other published advertising do not constitute warranties but are instead merely descriptions about characteristics and quality unless explicitly referred to as such. Until conclusion of the contract they may be amended at any time - unless they are of a type already stated as binding within an offer of SMAG.

2.3. The legal relationship between SMAG and the contractual partner is solely governed by the purchase contract made in writing, including these General Terms and Conditions. Oral promises from the part of SMAG, also from the part of staff members of SMAG, are legally non-binding and are replaced by the written contract, unless it is expressly stated therein that they will continue to be binding in each case.

2.4. SMAG retains all property rights and copyrights to offer documents, drawings, descriptions, samples, quotations, and other documents and auxiliary material. Without the express permission of SMAG, they may not be passed on, published, duplicated or made accessible to other third parties. Documents and data carriers are to be returned upon request without retaining any copies of them.

2.5 The contractor reserves the right to charge cancellation costs in the event of cancellation by the client. These cancellation costs depend on the time of the official cancellation and the production progress at that time.

#### **3. Prices**

3.1. Unless stated otherwise, SMAG shall be bound to adhere to the prices stated in an offer designated as binding for up to 30 days from the date of its issue. Otherwise, the prices stated in the order confirmation of SMAG for the scope of services and supplies specified plus the respective statutory value added tax shall apply.

3.2. Any additional supplies and services will be charged separately.

3.3. Unless otherwise agreed, the prices are understood to be in EURO "ex works", including loading in our works, however excluding packaging plus the respective statutory value added tax.

3.4. Insofar as a period of more than six months is between the conclusion of the contract and the agreed and/or actual delivery date and insofar as SMAG is not in default on delivery, those prices of SMAG shall apply which are valid at the time of delivery or provision, unless a fixed price agreement has expressly been made for a specified period of time.

3.5. In the case of price increases from the part of suppliers as well as unexpected increases in wages and transport costs, SMAG is entitled to raise the agreed prices to a reasonable extent, if no fixed price agreement has expressly been made for a specified period of time.

#### **4. Period of Delivery and Performance**

4.1. Terms and deadlines for the supply of goods and services announced by SMAG are nonbinding provided that a firm deadline of date has not been expressly approved or agreed to.

4.2. SMAG is not liable for impossibility of delivery or for delivery delays if these are due to Acts

of God or other events unforeseeable at the time the agreement was signed, e.g. operational disruptions of all kinds, problems in obtaining materials and/or energy, transport delays, strikes, lawful lockouts, difficulties in obtaining necessary official authorizations, official provisions or nondelivery, incorrect delivery or untimely delivery by suppliers, if SMAG is not responsible for them. If such events make performance or deliveries considerably more difficult or impossible and the hindrance is not only of temporary duration, SMAG will be entitled to cancel the agreement. In the case of hindrances of only temporary duration, delivery or performance deadlines will be extended by the length of the period of the hindrance plus an appropriate start-up period. SMAG shall notify to the Customer any foreseeable delay as soon as possible.

4.3. If as a result of the delay the Customer cannot reasonably be expected to accept the supply of goods or services, he may cancel the contract by immediate written declaration to SMAG.

4.4. If the delivery time is extended or if SMAG is released from its obligation to effect delivery, the Customer cannot derive any claims to damages from this.

4.5. SMAG is entitled to make partial deliveries or services if:

- \_ the Customer can use the partial delivery as part of the contractually intended purpose,
- \_ the delivery of the remaining goods as ordered is assured,
- \_ the Customer incurs no major additional effort or costs.

4.6. Adherence to SMAG's delivery and service obligations assumes that the obligations of the Customer have been fulfilled properly and in good time. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if SMAG is responsible for the delay.

4.7. If the Customer falls into default of acceptance SMAG shall be entitled to demand compensation for the damage arising; on commencement of the delay in acceptance the risk of accidental deterioration and accidental loss passes to the Customer.

## **5. Transfer of Risk**

Risk transfers to the Customer when the goods to be delivered are handed over to the person responsible for shipping or the delivery item has left the warehouse of SMAG for the purpose of shipping. This also applies in the case of partial deliveries or if SMAG has contracted to perform other services as well. If shipping or transfer is delayed upon request of the Customer or for reasons for which the Customer is responsible, risk transfers to the Customer on the day the goods to be delivered are ready to be shipped and SMAG has notified the Customer of this.

## **6. Rights of the Customer relating to Defects**

6.1. The products are delivered free of material defects and defects of title; the period of time for fault claims amounts to one year starting from the beginning of statutory limitation. This time period does not apply if longer periods are mandatory by law, in particular for buildings and items used for buildings (§§ 438 sect. 1 no. 2 of the German Civil Code (BGB)), rights of recourse (§ 479 sect. 1 of the German Civil Code (BGB)) or in the case of willful intent, fraudulent concealment of a defects as well as non-compliance with any guarantee of quality. The statutory periods apply for compensation claims. The statutory regulations on the suspension of periods, stay and recommencement of the periods remain unaffected.

6.2. If operating and maintenance instructions of SMAG are not followed, changes are made to the products, parts are replaced or consumable materials are used which do not comply with the original specifications, any claims for defects in the products shall lapse.

6.3. Goods delivered have to be carefully checked after delivery to the Customer or to a third party designated by him. They shall be deemed to be approved by the Customer if SMAG has not received a written notification of defects pertaining to visible defects or other defects visible in the course of a prompt, thorough examination within seven working days following delivery. With regard to other defects, the items delivered shall be deemed to be approved by the Customer, if SMAG has not received the notification of defects within seven working days after the time at which the defect became evident.

6.4. In the event of a notification of the Customer that the products have a defect, SMAG may demand at its own discretion and expense that

a) the defective part and/or device is sent back to SMAG for repair and subsequent return to the Customer,

b) the Customer keeps the defective part and/or device available and a service technician of SMAG is sent to the Customer in order to carry out the repair.

However, if a request to remedy a defect from the part of the Customer proves to be unjustified, SMAG may demand the incurred costs (in particular transportation, routing transport, labor and material costs) be reimbursed by the Customer.

6.5. Only in urgent cases endangering operational safety or to prevent unreasonably high

damages, the Customer is entitled to carry out the repair himself or to have it repaired by a third party and to demand appropriate repayment for the costs incurred by SMAG. However, the Customer has to inform SMAG immediately.

6.6. Claims by the Customer for the purpose of subsequently fulfilling necessary expenses, in particular transportation, routing, labor and material costs, are excluded to the extent that the expenses increase, because the item of delivery was transported to a location other than the Customer's place of business or the place of delivery originally agreed upon, unless the delivery complies with the intended use of the product.

6.7. Should the repair fail after an adequate period of time – if this time can be dispensed with according to statutory provisions – the Customer may demand at his discretion a reduction of the payment or withdraw from the contract.

6.8. No liability shall be accepted for normal wear and tear.

6.9. Any claims against SMAG for defects shall only be prerogative for the direct Customer and are not assignable.

6.10. Special legal requirements for the final delivery of the goods to a consumer remain unaffected in any case (supplier regress as per §§ 478, 479 of the German Civil Code (BGB)).

## **7. Spare Parts**

For a period of five years from the delivery of a machine, SMAG shall supply spare parts for that machine at the respective valid spare part prices.

## **8. Reservation of Proprietary Rights**

8.1. Until all payment claims to which SMAG is entitled from the Customer resulting from the purchase contract or an existing business relationship now or in the future have been met (including all current account balance amounts), SMAG shall be granted the following security, which SMAG shall release at its own discretion on demand by the Customer as soon as the value of the security is permanently more than 10% above the value of the amounts payable.

8.2. The goods shall remain the property of SMAG. Any processing or reforming shall always be carried out for SMAG as the manufacturer, but without entailing any obligation for SMAG. If the (co-)ownership of SMAG lapses by processing, mixing or combining, it is now agreed in advance that the Customer's (co-)ownership of the combined object shall be assigned to SMAG proportionally (in proportion to the invoice value). The purchaser shall keep the (co-)owned property of SMAG free of charge.

8.3. The Customer shall be entitled to process and/or sell the reserved goods in the course of proper business transactions as long as he is not in arrears. Prior to complete payment of the secured claims, any pledging or transfer of ownership by way of security of the goods subject to retention of title is prohibited. The Customer assigns to SMAG in advance, by way of security, in full or to the amount of proportion of co-ownership of SMAG (including the respectively arising value added tax) all accounts receivable with respect to the reserved goods subject to retention of title (including all balances receivable in any current account) which arise from resale or any other legal grounds (insurance, prohibited action). SMAG hereby accepts the assignment SMAG grants the Customer a revocable authorization to collect on its own account and in its own name the accounts receivable which are assigned to SMAG. This authorization of collection may only be revoked if the Customer fails to meet its payment obligations properly or if an application for the initiation of insolvency proceedings is filed. If this is the case, SMAG may demand that the Customer informs SMAG of the assigned accounts receivable and the debtors, that he provides SMAG with all information and relevant documents necessary to assert its rights and that he informs the debtor (as well as third parties) of the assignment of the claims.

8.4. In cases where third parties access the goods subject to reservation of title, particularly in the case of distraint, the Customer will point to the ownership of SMAG and notify SMAG without delay so that the company can assert its property rights.

As far as the third party is not able to reimburse the judicial or extrajudicial charges arising in this relation to SMAG, the Customer is liable for this.

8.5. In the case of negligent breach of essential contractual obligations, in particular in the event of delayed payments, SMAG is entitled to withdraw from the contract and to demand the reserved goods. The fact that SMAG takes back reserved goods and/or exercises the retention of title shall basically not be construed to constitute a rescission of the contract.

## **9. Payment**

9.1. Unless otherwise agreed, the invoices of SMAG are due for payment within 14 calendar days from the date of issue of the invoice, however no later than 30 days after delivery, without any deductions.

9.2. A payment shall only be deemed to have been paid after the sum has become available to SMAG. In the case of payment by cheque, the payment is only deemed to have been made after the cheque has been cashed.

9.3. If the Customer falls into payment arrears, SMAG is entitled to charge interest from the appropriate point in time in the amount of 8 percentage points above the basic interest rate of the European Central Bank p.a. The enforcement of a higher claim for damages by SMAG is admissible.

9.4. If SMAG learns after conclusion of the contract of circumstances which are likely to substantially reduce the creditworthiness of the Customer and which place the payment of the outstanding receivables by the Customer from the respective contractual relationship at risk, especially if a cheque issued by the Customer cannot be honored or the Customer ceases to make payments, SMAG shall be entitled to declare that the whole of the outstanding debt is immediately payable even if SMAG has previously accepted cheques. In this case, SMAG shall furthermore be entitled to demand advance payments or security for still outstanding supplies or services.

9.5. The Customer shall only be entitled to offset, if the counterclaims have been determined to be undisputed or legally binding.

9.6. The Customer is not entitled to assert any rights of retention towards SMAG, unless these are based on the same contractual relationship.

## **10. Changes in Structural Design**

SMAG reserves the right to make changes in the structural design, insofar as these do not hinder the contractually intended use of the item delivered and these are not unreasonable for the Customer. However, SMAG shall not be obliged to make such changes in products that have already been delivered.

## **11. Property Rights**

11.1. SMAG shall indemnify the Customer and its purchasers against any claims arising from violations of copyright, trademarks or patents unless the design for the delivered product originated from the Customer. The obligation of SMAG to provide indemnification is limited to the amount of any predictable damage or loss. An additional requirement for indemnity is that the conduct of any legal disputes is left to the SMAG and that the alleged violation of rights is exclusively due to the design and characteristics of the items delivered by SMAG, without any connection or use together with other products.

11.2. SMAG shall optionally be entitled to release itself from the obligations undertaken in subsection 1 by one of the following means:

a) either by obtaining the necessary licenses for the patents that are allegedly violated or  
b) by providing the Customer at his own expense with a changed item of delivery, or parts thereof within an appropriate period of time, which will eliminate the allegation of a violation of a right by the item delivered if they are used instead of the delivery item or part of an item that causes the violation, but such that the item delivered continues to fulfill its contractually agreed functions. If SMAG fails to do so, the Customer is entitled to withdraw from the contract or to reduce payment by a commensurate amount. Any claims for damages of the Customer are subject to the limitations of § 13 of these General Terms and Conditions.

## **12. Confidentiality**

Unless explicitly otherwise agreed by means of the General Terms and Conditions or in writing, the information provided to SMAG in connection with the order shall not be deemed to be confidential.

## **13. Liability**

13.1. Any claims for compensation are excluded irrespective of the nature of the violation of obligations, including but not limited to prohibited actions, except in cases of deliberate action or gross negligence.

13.2. In the event of a violation of major contractual obligations, SMAG shall be liable for any case of negligence, but only up to the amount of the foreseeable loss or damage. Essential

contractual obligations are those obligations that may be fulfilled solely by means of due implementation of the contract and on the fulfillment of which the Customer regularly relies and may rely.

13.3. Any claims for loss of profit, saved expenses, on the basis of compensation claims of third parties and any other direct and consequential loss or damage cannot be demanded unless an assured characteristic guaranteed by SMAG is explicitly declared to be for the purpose of indemnifying the purchaser against such loss or damage or unless there is evidence of intent or gross negligence or of a violation of a substantial contractual obligation.

13.4. The limitations of liability and exclusions of liability in sub-sections 1 to 3 shall not apply to claims which have arisen due to fraudulent action by SMAG, to any liability for guaranteed characteristics, to claims under the German Product Liability Act or to loss or damage resulting from death, bodily injury and harm to health.

13.5. Insofar as the liability of SMAG is excluded or limited, this shall also apply to the staff members, employees, representatives and vicarious agents of SMAG.

#### **14. Applicable Law, Place of Jurisdiction**

14.1. These business terms and conditions and the complete contractual relationship between SMAG and the Customer are subject to the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

14.2. If the Customer is a registered merchant in terms of the German Commercial Code (HGB), a legal person under public law or a special asset under public law, the sole (also international) place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business in Braunschweig. SMAG is also entitled to take legal action against the Customer at its place of business.